

MAY 19 1992

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In The  
**Supreme Court of the United States**  
October Term, 1991

THE STATE OF MISSISSIPPI, ET AL.,

v.

*Petitioners,*

THE STATE OF LOUISIANA, ET AL.,

*Respondents.*

On Writ Of Certiorari To The United States Court  
Of Appeals For The Fifth Circuit

JOINT APPENDIX  
VOLUME I, PAGES 1-126

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Petition For Certiorari Filed On January 16, 1992  
Certiorari Granted March 23, 1992

## TABLE OF CONTENTS FOR JOINT APPENDIX

	Volume I	Page
1. Relevant docket entries - Mississippi District Court		
a) Complaint filed July 29, 1986 .....		1
b) Motion for Intervention filed by State of Louisiana and Lake Providence Port Commission June 17, 1987.....		1
c) Order Granting Leave to Intervene July 1, 1987 .....		1
d) Intervention of the State of Louisiana and Lake Providence Port Commission filed July 30, 1987 .....		1
e) Intervenor's Motion for Order to File Third Party Complaint filed November 24, 1987 ..		1
f) Order Allowing Intervenor to File Third Party Complaint filed November 24, 1987..		1
g) Third Party Complaint filed against the State of Mississippi November 24, 1987 ...		1
h) State of Mississippi's Answer to Third Party Complaint January 11, 1988 .....		1
i) Motion for Separate Trial of Interstate Boundary Issue filed by State of Louisiana April 25, 1989.....		2
j) Order Bifurcating Case Into Two Trials May 5, 1989 .....		2
k) Statement of Position of the State of Louisiana and Lake Providence Port Commission May 17, 1989 .....		2

## TABLE OF CONTENTS - Continued

	Page
l) Supplemental Statement of Position of State of Louisiana and Lake Providence Port Commission June 5, 1989 .....	2
m) Judgment Finding Stack Island is within the State of Mississippi July 3, 1989 .....	2
n) Intervenor's Motion to Accept Testimony and Exhibits Offered in First Trial September 25, 1989 .....	3
o) Order Allowing Testimony and Exhibits Produced by Intervenors September 25, 1989 .....	3
p) Judgment Declaring Plaintiffs to be the owners of the subject property December 13, 1989 .....	3
q) Notice of appeal of the State of Louisiana and the Lake Providence Port Commission January 8, 1990 .....	4
2. Fifth Circuit Docket Entries	
a) Order Denying Rehearing October 22, 1991 ..	4
3. Motion for Intervention of State of Louisiana and Lake Providence Port Commission .....	5
4. Memorandum in Support of Motion for Intervention .....	6
5. Order Granting Motion for Intervention .....	9
6. Intervention of the State of Louisiana and Lake Providence Port Commission .....	10
7. Response of Plaintiffs to Intervention .....	16
8. Motion of State of Louisiana for Order to File Third Party Complaint .....	19

## TABLE OF CONTENTS - Continued

	Page
9. Order Granting Leave to File Third Party Complaint .....	21
10. Third Party Complaint against the State of Mississippi .....	22
11. Answer of the State of Mississippi to Third Party Complaint .....	28
12. Motion for Separate Trial of Interstate Boundary Issue .....	31
13. Memorandum in Support of Intervenor's Motion for Separate Trial of Interstate Boundary Issue .....	33
14. Order Bifurcating and Separating Case into Two Trials .....	38
15. Statement of Position of the State of Louisiana and Lake Providence Port Commission .....	40
16. Supplemental Statement of Position of the State of Louisiana and Lake Providence Port Commission .....	43
17. Proposed Findings of Fact and Conclusions of Law of Plaintiffs (Submitted in June 1989) ....	47
18. Proposed Findings of Fact and Conclusions of Law of Plaintiffs (Submitted in March 1989) ...	55
19. Proposed Findings of Fact and Conclusions of Law of the State of Mississippi .....	61
20. Proposed Findings of Fact and Conclusions of Law of the State of Louisiana and Lake Providence Port Commission .....	67
21. Plaintiffs' Exhibit 64 (portion) .....	75

## TABLE OF CONTENTS - Continued

	Page
22. Portions of Transcript of Testimony	
a) Direct Examination of Eyreal "Jelly" Higgins	78
b) Cross-Examination of Eyreal "Jelly" Higgins	79
c) Direct Examination of Charles P. Shelton...	81
d) Cross-Examination of Charles P. Shelton ...	82
e) Direct Examination of James B. Kelly .....	83
f) Cross-Examination of James B. Kelly .....	83
g) Direct Examination of Bill Marshall .....	83
h) Cross-Examination of Bill Marshall.....	84
i) Direct Examination of Ralph Polk.....	85
j) Cross-Examination of Ralph Polk .....	86
k) Voir Dire Examination of Austin Smith.....	87
l) Direct Examination of Austin Smith.....	88
m) Cross-Examination of Austin Smith .....	100
n) Direct Examination of Jimmy R. House ....	108
o) Direct Examination of Ernest S. Easterly ...	109
p) Cross-Examination of Ernest S. Easterly ....	112
q) Direct Examination of Hatley Harrison.....	113
r) Stipulation .....	114
s) Direct Examination of Mrs. Vail Delony....	118
t) Direct Examination of Joseph A. Oliveros ..	120
u) Direct Examination of Michael Murray .....	121
v) Direct Examination of Joe Chatman .....	123
w) Direct Examination of Billy Jack Murray ...	124

## TABLE OF CONTENTS - Continued

	Page
Volume II	
23. United States Survey Map of Township 11 North, Range 9 West, Issaquena County, Mississippi 1826-1827, Plaintiffs' Exhibit 1.....	127
24. United States Survey Map of Township XXI, Range XIII East, East Carroll Parish, Louisiana, Plaintiffs' Exhibit 2 .....	128
25. 1867 Map of the Eastern Shore of the Mississippi River, Plaintiffs' Exhibit 3.....	129
26. 1874 Reconnaissance of the Mississippi River made pursuant to an 1874 Act of the United States Congress, Plaintiffs' Exhibit 4.....	130
27. 1879 Map of the Mississippi River Commission, Plaintiffs' Exhibit 5 .....	131
28. 1881 United States Patent Survey, Plaintiffs' Exhibit 7 .....	132
29. 1881 Marshall's Shoreline Survey, Plaintiffs' Exhibit 8 .....	133
30. 1882 MRC Hydrographic Survey, Plaintiffs' Exhibit 13 .....	134
31. Vicinity Map, Louisiana Exhibit LA-1A.....	136
32. 1911 Map, Louisiana Exhibit LA-16 .....	139
33. 1909 Map, Louisiana Exhibit LA-16A.....	140
34. 1925-26 Composite Hydrographic Survey .....	142
35. Portion of Report of Mississippi River Commission, Louisiana Exhibit LA-18A .....	144
36. 1883 MRC Map, Louisiana Exhibit LA-18A ....	163



## TABLE OF CONTENTS - Continued

	Page
37. 1883 MRC Map, Louisiana Exhibit LA-18A . . . .	164
38. 1930 Low Water Survey Composite, Louisiana Exhibit LA-19. . . . .	165
39. Geological Investigation of the Alluvial Valley of the Lower Mississippi River, Louisiana Exhibit LA-32G. . . . .	168
40. Courses of the Meander Belt, Lake Providence Reach, Exhibit LA-32H. . . . .	174
41. Map of Geographic coordinates of Thalweg as of January, 1988 Survey, Louisiana Exhibit LA-32F . .	176
42. Stack Island Geographic coordinates, 1882 Fixed Thalweg, Louisiana Exhibit LA-32F1. . . . .	177

## RELEVANT DOCKET ENTRIES

## MISSISSIPPI DISTRICT COURT

DATE	NR.	PROCEEDINGS
7-29-86		Complaint, orig. & 47 copies, filed.
6-17-87		State of Louisiana's Motion for Intervention, also Lake Providence Port Commission filed.
7-1-87		ORDER: that Motion of State of Louisiana and Lake Providence Port Commission for leave to intervene in these proceedings is GRANTED, filed (JRC), copies mailed dkt'd 7-6-87.
7-30-87		INTERVENTION of the State of Louisiana and the Lake Providence Port Commission, filed.
11-24-87		Intervenor's Motion for Order to File Third Party Complaint, w/c/s, filed.
11-24-87		ORDER: that Intervenor is allowed to file Third Party Complaint, filed (JRC), copies mailed.
11-24-87		THIRD PARTY COMPLAINT, filed.
1-11-88		State of Miss' ANSWER to THIRD PARTY COMPLAINT, w/c/s, filed.

4-25-89 State of Louisiana's mtn for separate trial of interstate boundary issue w/ntc of mtn bfr Judge Barbour in Vicksburg.

5-5-89 ORDER: various mtns to strike answe and counterclaims of defts taken under advisement as set out; the case is separated into 2 trials; mtns for substitution of parties is granted & Martha Cecillia Russell Reed & Lynn Ogden Russell are substituted for Kathleen P. Russell and Ogden "Sonny" Russell, also Sam Donald, is substituted for Bessie Price Talbert Purdy - said parties to show cause w/in 12 days from 5-5-89 why default should not be entered. WHB, cc. eod 5-10-89.

5-17-89 Statement of position of the State of Louisiana & Lake Providence Port Comm.

6-5-89 State of Louisiana & Lake Providence Port Comm's Suppl Statement of Position.

7-3-89 JUDGMENT: that Stack Island, or land no.94 is located wholly within the State of Miss; further, the 2nd trial to determine all other

issues is set for 10-2-89 in Vicksburg, OB 1989 pg. 168-174. WHB, cc.

9-25-89 Intervenor, State of Louisiana & the Lake Providence Port Comm's mtn to accept testimony & exhibits offered in 1st phase of the trial w/attachs and ntc of mtn bfr Judge Barbour ASAP.

9-25-89 ORDER: that all testimony & exhibits produced by Intervenor at the 1st phase of the trial is accepted for all purposes in the 2nd phase. WHB, cc.

12-13-89 JUDGMENT: that the property which is the subject of this litigation is located in Mississippi and that the pltfs are the owners as set out; further, this judgment, along w/a copy of the plat of Exh. P-32D which is attached may be recorded in the Land Records of Issaquena County, MS and in the Clerk's office in East Carrol Parish, Louisiana, OB 1989, pg. 429-437. WHB, cc. (Copies also mailed to defaulted defts per Mr. Bailess)

1-8-90

State of Louisiana and the  
Lake Providence Port  
commission's **NOTICE OF  
APPEAL** to the U.S. Court of  
Appeals for the 5th Cir from  
judgment dated 7-3-89 and  
judgment filed 12-13-89.

\_\_\_\_\_  
[5TH CIRCUIT]

OCT 22 1991 Order Denying Rehearing

\_\_\_\_\_

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DISTRICT

JULIA DONELSON HOUSTON, ET AL.  
Plaintiffs

VERSUS

RUTH M. THOMAS, ET AL.,  
Defendants

CIVIL ACTION  
NO. W 86-0080(B)

\*\*\*\*\*  
MOTION FOR INTERVENTION OF STATE OF LOUISI-  
ANA AND LAKE PROVIDENCE PORT COMMISSION  
(Filed June 17, 1987)

NOW INTO COURT comes the State of Louisiana and the Lake Providence Port Commission, ex rel. William J. Guste, Jr., Attorney General of the State of Louisiana, and other undersigned counsel, who move for leave of court to intervene in this action as a matter of right under the Constitution of the United States; acts of the United States Congress; and under 28 USC 1331, 2201 and 2202, as well as other causes of action not asserted by the original plaintiffs or defendants, as set forth in the proposed complaint; and that this court should exercise jurisdiction over the claims of intervenors accordingly.

Respectfully submitted,

STATE OF LOUISIANA

/s/ William J. Guste, Jr.  
WILLIAM J. GUSTE, JR.  
Attorney General

\_\_\_\_\_

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DISTRICT

JULIA DONELSON HOUSTON, ET AL.  
Plaintiffs

VERSUS

RUTH M. THOMAS, ET AL.,  
Defendants

CIVIL ACTION  
NO. W 86-0080(B)

\*\*\*\*\*  
MEMORANDUM IN SUPPORT OF MOTION FOR  
INTERVENTION OF STATE OF LOUISIANA AND LAKE  
PROVIDENCE PORT COMMISSION

The original complaint filed herein is styled as a Complaint To Remove Cloud and identifies numerous plaintiffs as the owners in fee simple of a certain tract of land purportedly lying in Mississippi, described with particularity in paragraph 52 thereof.

Complainants recite their title as having derived from patents of the United States of America and subsequently recorded in Mississippi, as set forth in paragraph 54 of the Complaint.

Thereafter, in paragraph 55 and following paragraphs, complainants allege that Stack Island was affected by the divided flows of the Mississippi River into the natural erosion and accretion processes of the river, gradually migrating southward and westward.

Intervenors now show that their rights arise under the Constitution of the United States and an act of Congress approved April 6, 1812, admitting the State of Louisiana into the Union of the United States of America,

which act is found in Chapter 50 of the United States Statutes at Large, Volume 2, Page 701; that the real question in dispute between the plaintiffs and the defendants is the location of the boundary line between the State of Louisiana and the State of Mississippi for the pertinent periods set forth in plaintiffs' complaint; that the determination of such boundary involves an interpretation of such acts of Congress setting forth the boundaries and determination of the boundaries between said two states; that this controversy further involves the equal footing doctrine applicable to the states of the United States; it would further appear to your petitioners, and it is so alleged, that the Treaty of Peace concluded between the United States and Great Britain, September 3, 1783, 8 Stat. 80, is also involved in this controversy, including an interpretation thereof as it affects or may affect such boundary between the State of Mississippi and the State of Louisiana, which can only be made pursuant to the Constitution of the United States and federal law involving a question of interpretation and application of federal law and jurisdiction. The above described action is a civil action in which this court has original jurisdiction in respect to the federal questions involved under the provisions of 28 USC 1331, 2201 and 2202.

This controversy also involves a dispute between citizens of different states having separate and independent claims as between citizens of different states in that plaintiffs are citizens of the State of Mississippi; adult non-residents of the State of Mississippi, domiciled in Louisiana; the Federal Deposit Insurance Company; unknown heirs at law; as against defendants alleged to be



the owners of land in Louisiana who have made assertions of ownership to portions of the lands of plaintiffs, as set forth in paragraph 60 of the Complaint, whereby said acts on the part of defendants are alleged to have created a cloud upon the title of plaintiffs, which plaintiffs are allegedly entitled to have removed.

It is now shown that a large and substantial portion of the lands in question are owned by the State of Louisiana and/or the Lake Providence Port Commission, and said intervenors are entitled to a declaration of their rights and other legal relations as against plaintiffs, pursuant to 28 USC 2201, et seq, and other applicable law, as cited hereinabove and as may be found by the court to be applicable to this cause.

Accordingly, the State of Louisiana and the Lake Providence Port Commission moves this Honorable Court for leave to file its Petition for Intervention based upon its rights enumerated [sic] herein under the Constitution of the United States; acts of Congress; the cited statutes of the United States and Rule 24 of the Federal Rules of Civil Procedure.

Respectfully submitted,  
STATE OF LOUISIANA

/s/ William J. Guste, Jr.  
WILLIAM J. GUSTE, JR.  
Attorney General

/s/ Gary L. Keyser  
GARY L. KEYSER, Lead Counsel  
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(504) 922-0187

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DISTRICT

JULIA DONELSON HOUSTON, ET AL.  
Plaintiffs

VERSUS

RUTH M. THOMAS, ET AL.,  
Defendants

CIVIL ACTION  
NO. W 86-0080(B)

\*\*\*\*\*

ORDER  
(Filed July 1, 1987)

The foregoing Motion for Intervention considered:

IT IS ORDERED that the motion of the State of Louisiana and the Lake Providence Port Commission, ex rel. William J. Guste, Jr., Attorney General, of the State of Louisiana for leave to intervene in these proceedings is hereby granted.

Rendered and signed this 30 day of June, 1987 at  
Jackson, Mississippi.

/s/ John R. Countiss  
JOHN R. COUNTISS, MAGISTRATE  
United States District Court  
SOUTHERN DISTRICT OF  
MISSISSIPPI

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DISTRICT

JULIA DONELSON HOUSTON, ET AL.  
Plaintiffs

VERSUS

RUTH M. THOMAS, ET AL.,  
Defendants

CIVIL ACTION  
NO. W 86-0080(B)

\*\*\*\*\*  
INTERVENTION  
(Filed July 30, 1987)

NOW INTO COURT, comes the State of Louisiana and the Lake Providence Port Commission, appearing herein through the Honorable William J. Guste, Jr., Attorney General and Gary L. Keyser, Assistant Attorney General, and files this Intervention, alleging the following:

NATURE OF ACTION

This is a civil action brought by plaintiffs under 28 USC 1332, alleging that plaintiffs are the owners in fee simple of a certain tract of land lying in Issaquena County, Mississippi, described with greater particularity in paragraph 52 of the Complaint to Remove Cloud. Plaintiffs allegedly derived their title to the said lands according to a chain of title described in paragraphs 54 et seq. of the original Complaint.

JURISDICTION AND VENUE

1. This court has jurisdiction over the subject matter of this action pursuant to 28 USC 1331, 1332, 2201 and 2202; as well as under the Constitution of the United States and an Act of Congress approved April 6, 1812, admitting the State of Louisiana into the Union of the United States of America, which act is found in Chapter 50 of the United States Statutes At Large, Volume 2, page 701; and, further, under the Treaty of Peace concluded between the United States and Great Britain, September 3, 1783, 8 Stat. 80.

2. Venue is proper before this district court pursuant to 42 USC 1391(f)(1), inasmuch as a substantial part of the property that is the subject of the action is or may be situated within this judicial district.

DEFENDANTS

3. Defendants, as alleged by plaintiffs, are adult non-residents of the State of Mississippi, domiciled in Louisiana; the Federal Deposit Insurance Company; unknown heirs at law; and residents and domiciliaries of the State of Louisiana.

4. Intervenors are the State of Louisiana and the Lake Providence Port Commission, an agency or instrumentality of the State of Louisiana under 28 USC 1603.

REFERENCE STATEMENT

5. The original complaint filed herein on behalf of numerous plaintiffs claiming to be the owners in fee simple title of a certain tract of land purportedly lying in

Mississippi, described with particularity in paragraph 52 thereof, is styled as a Complaint to Remove Cloud. The plaintiffs are citizens of the State of Mississippi; adult non-residents of the State of Mississippi; domiciled in Louisiana; the Federal Deposit Insurance Company; and unknown heirs at law. The defendants are numerous and are named in paragraphs 4-51, inclusive, it being alleged that none of them are residents of the State of Mississippi. However, it is noted that the Federal Deposit Insurance Corporation is named as both a plaintiff in the introductory statement and as a defendant in paragraph 47.

6. Plaintiffs recite their title as having derived from patents of the United States of America and subsequently recorded in Mississippi, as set forth in paragraph 54 of the complaint.

7. In paragraph 55 and following paragraphs, plaintiffs allege that Stack Island was affected by the divided flows of the Mississippi River into the natural erosion and accretion processes of the river, gradually migrating southward and westward. Natural processes have caused Stack Island to now be attached to the west bank of the Mississippi River.

8. The real question in dispute between the plaintiffs, defendants and intervenors is the location of the boundary line between the State of Louisiana and the State of Mississippi for all periods of time pertinent to the issues set forth in plaintiffs' complaint. The determination of the boundary involves an interpretation of the acts of Congress setting forth the boundaries and the determination of the boundaries between the two states. This controversy further involves the Equal Footing Doctrine

of the states of the United States; and it further appears to your intervenors, and it is so alleged, that the Treaty of Peace concluded between the United States and Great Britain on September 3, 1783, 8 Stat. 80, is also involved in this controversy, and including an interpretation thereof as it affects or may affect such boundary between the State of Mississippi and the State of Louisiana, which determination can only be made pursuant to the Constitution of the United States and federal law involving a question of the interpretation and application of federal law and jurisdiction.

9. This controversy involves a dispute between citizens in different states having separate and independent claims, as well as a dispute between citizens of one state and the sovereign itself of another state, i.e., the State of Louisiana, and the Lake Providence Port Commission, an agency and instrumentality of the State of Louisiana.

10. Plaintiffs' complaint appears to state a separate and independent claim as to each of the named defendants, with the possible exception of the Federal Deposit Insurance Corporation.

11. The amount in controversy as to each of the said defendants exceeds the sum of \$10,000.00, exclusive of interest and costs, with respect to each such separate and independent claim as to each said defendant, including the State of Louisiana and the Lake Providence Port Commission, intervenors.

12. Intervenors show that a large and substantial portion of the lands in question are owned by the State of Louisiana and/or the Lake Providence Port Commission, and said intervenors are entitled to a declaration of their



rights and other legal relations as against plaintiffs, pursuant to 28 USC 2201, et seq., and other applicable law, as cited hereinabove and as may be found by the Court to be applicable to this cause.

WHEREFORE, intervenors, the State of Louisiana and Lake Providence Port Commission, respectfully pray:

(1) That upon a final hearing hereof, judgment be entered determining the proper boundary line between the State of Louisiana and the State of Mississippi for all time periods pertinent to the issues set forth herein, according to the acts of Congress setting forth the boundaries and determination of boundaries between said two states, including application of the Equal Footing Doctrine; the Treaty of Peace concluded between the United States and Great Britain, September 3, 1783, 8 Stat. 80 and an act of Congress approved April 6, 1812, admitting the State of Louisiana into the Union of the United States of America, United States Statutes at Large, Chapter 50, Volume 2, page 701, and other applicable law involving the question of boundary determination;

(2) That upon a final hearing hereof, judgment be entered in this cause adjudicating the lands in question to the proper parties as owners thereof, as between plaintiffs, defendants and intervenors, and further declaring the rights and other legal relations as between the parties;

(3) For such other relief as this Court may deem appropriate.

Respectfully submitted,  
STATE OF LOUISIANA

/s/ William J. Guste  
WILLIAM J. GUSTE, JR.  
Attorney General

/s/ Gary L. Keyser  
GARY L. KEYSER, Lead Counsel  
Assistant Attorney General  
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Please Serve:

Plaintiffs, through counsel of record:

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Mr. Geoffrey C. Morgan  
WHEELLESS, BEANLAND, SHAPPLEY  
& BAILESS  
Post Office Box 991  
Vicksburg, MS 39180

Defendants, through counsel of record:

Mr. George F. Fox, Jr.  
McINTOSH, FOX & LANCASTER  
301 Morgan Street  
Lake Providence, LA 71254

---



UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION

JULIA DONELSON HOUSTON, ET AL.

V.

CIVIL ACTION

RUTH M. THOMAS, ET AL., NO. W 86-0080(B)

RESPONSE TO INTERVENTION

COMES NOW Julia Donelson Houston, Ruth Houston Baker and Hines H. Baker, Jr., Co-Executors and Co-Trustees of the Estate of George T. Houston a/k/a George T. Houston, III, Deceased; and Ruth Houston Baker, individually, and in response to the intervention filed by the State of Louisiana and the Lake Providence Port Commission would respond, paragraph by paragraph, as follows, to-wit:

1. Plaintiffs admit this Court has jurisdiction over the subject matter of this action under 28 USC §1332. Plaintiffs deny the remaining allegations of Paragraph 1.
2. The allegations of Paragraph 2 are admitted.
3. The allegations of Paragraph 3 are admitted.
4. The allegations of Paragraph 4 are admitted.
5. Plaintiffs admit that they are the owners in fee simple title of a certain tract of land lying in Mississippi described with particularity in Paragraph 52 of the Complaint to Remove Cloud. Plaintiffs further admit that Julia Donelson Houston is an adult resident citizen of Mississippi and that Ruth Houston Jarvis Baker and Hines H. Baker, Jr. are adult resident citizens of Harris County,

Texas. Plaintiffs deny that any of them are domiciled in Louisiana, deny that the Federal Deposit Insurance Company is a plaintiff and further deny that any unknown heirs at law are plaintiffs. Plaintiffs deny the remaining allegations of Paragraph 5.

6. The allegations of Paragraph 6 are admitted.

7. Plaintiffs admit that in Paragraph 55 and following paragraphs of the Complaint to Remove Cloud, Plaintiffs set forth certain facts contained therein concerning the subject property. Said Complaint speaking for itself and requires no admission or denial herein. Plaintiffs deny the remaining allegations of Paragraph 7.

8. Plaintiffs admit that one question in dispute between Plaintiffs, Defendants and Intervenor is the location of the boundary line between the State of Louisiana and the State of Mississippi. Plaintiffs deny the remaining allegations of Paragraph 8.

9. Plaintiffs admit that this controversy involves a dispute between citizens in different states having separate and independent claims. Plaintiffs deny the remaining allegations of Paragraph 9.

10. Plaintiffs admit that their complaint states a separate and independent claim as to each of the named defendants. Plaintiffs deny the remaining allegations of Paragraph 10.

11. Plaintiffs admit that the amount in controversy as to each of the said Defendants exceeds the sum of \$10,000.00 exclusive of interest and costs with respect to each such separate and independent claim as to each said

defendant. Plaintiffs deny the remaining allegations of Paragraph 11.

12. The allegations of Paragraph 12 are denied.

Plaintiffs admit that this Court should be allowed to determine the proper boundary line between the State of Louisiana and the State of Mississippi for all time periods pertinent to the issues set forth in the Complaint to Remove Cloud and that upon a final hearing hereof judgment will be entered in this cause adjudicating the lands in question to the proper parties as owners thereof as between Plaintiffs, Defendants and Intervenor, and further declaring the rights and other legal relations as between the parties.

Respectfully submitted,

JULIA DONELSON HOUSTON,  
RUTH HOUSTON BAKER AND  
HINES H. BAKER JR., CO-  
EXECUTORS AND CO-TRUSTEES  
OF THE ESTATE OF GEORGE T.  
HOUSTON, a/k/a GEORGE T.  
HOUSTON, III, DECEASED; and  
RUTH HOUSTON BAKER,  
INDIVIDUALLY

BY: /s/ Robert R. Bailless  
Robert R. Bailless  
Attorney for Plaintiffs

---

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DISTRICT

JULIA DONELSON HOUSTON, ET AL.  
Plaintiffs

VERSUS

RUTH M. THOMAS, ET AL.,  
Defendants

CIVIL ACTION  
NO. W 86-0080(B)

\*\*\*\*\*

MOTION FOR ORDER TO FILE THIRD-PARTY COM-  
PLAINT

INTERVENORS, the State of Louisiana and the Lake Providence Port Commission, appearing herein as third-party plaintiffs through the Honorable William J. Guste, Jr., Attorney General and Gary L. Keyser, Assistant Attorney General, respectfully move this Honorable Court for an Order permitting the filing of a Third-Party Complaint in this matter, naming the State of Mississippi as a third-party defendant, on the following grounds:

(1) That since the filing of the Intervention herein, plaintiffs, through counsel, have filed a response to the Intervention and admit in paragraphs 8, 9 and 12 thereof that one question in dispute between plaintiffs, defendants and intervenors is the location of the boundary line between the State of Louisiana and the State of Mississippi; that there is a controversy involving a dispute between citizens in different states having separate and independent claims; and that a final determination will involve not only the location of a proper boundary line

between the State of Louisiana and the State of Mississippi for all times pertinent to the issues herein, but also a judgment adjudicating the lands in question to the proper parties as owners thereof as between plaintiffs, defendants and intervenors, and further declaring the rights and other legal relations as between the parties;

(2) It is necessary for the State of Mississippi to be made a party herein in order to assure that all interests are properly represented in the litigation and that a proper boundary line between the State of Louisiana and the State of Mississippi be drawn with the full participation of the State of Mississippi, in addition to the determination of other rights and legal relations as between the states; and

(3) Rule 14 of the Federal Rules of Civil Procedure permit the filing of the Third-Party Complaint at this time.

Respectfully submitted,  
WILLIAM J. GUSTE, JR.  
Attorney General

BY: /s/ Gary L Keyser  
GARY L. KEYSER  
Assistant Attorney General  
Louisiana Department of Justice  
Lands and Natural Resources  
Division  
7434 Perkins Road, Suite C  
Baton Rouge, Louisiana 70808  
(504) 765-2416

---

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DISTRICT

JULIA DONELSON HOUSTON, ET AL.  
Plaintiffs

VERSUS

RUTH M. THOMAS, ET AL.,  
Defendants

CIVIL ACTION  
NO. W 86-0080(B)

\*\*\*\*\*

ORDER

(Filed Nov. 24, 1987)

IT IS ORDERED that the foregoing Motion for Order to File Third Party Complaint by the State of Louisiana and the Lake Providence Port Commission is hereby GRANTED.

Jackson, Mississippi, this 23 day of November, 1987.

/s/ John R Countiss  
JOHN R. COUNTISS, Magistrate  
United States District Court  
Southern District of Mississippi

---



UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DISTRICT

JULIA DONELSON HOUSTON, ET AL.  
Plaintiffs

VERSUS

RUTH M. THOMAS, ET AL.,  
Defendants

CIVIL ACTION  
NO. W 86-0080(B)

\*\*\*\*\*

THIRD-PARTY COMPLAINT

(Filed Nov. 24, 1987)

NOW INTO COURT, comes the State of Louisiana and the Lake Providence Port Commission, Intervenor, appearing herein through the Honorable William J. Guste, Jr., Attorney General and Gary L. Keyser, Assistant Attorney General, and file this Third-Party Complaint, naming the State of Mississippi as third-party defendant, as follows:

1.

The original complaint filed herein on behalf of numerous plaintiffs claiming to be the owners in fee simple title of a certain tract of land purportedly lying in Mississippi, described with particularity in paragraph 52 thereof, is styled as a Complaint To Remove Cloud.

2.

The plaintiffs claim to be citizens of the State of Mississippi; adult non-residents of the State of

Mississippi, domiciled in Louisiana; the Federal Deposit Insurance Company; and unknown heirs at law.

3.

The defendants are numerous named individuals residing in the State of Louisiana, as set forth in paragraphs 4-51, inclusive of the complaint.

4.

Plaintiffs recite their title as having derived from patents of the United States of America and subsequently recorded in Mississippi, as set forth in paragraph 54 of the complaint.

5.

On information and belief, defendants' title is derived from patents of the United States of America and from the State of Louisiana pursuant to its inherent sovereignty; under the Equal Footing Doctrine; and according to the Treaty of Peace concluded between the United States and Great Britain on September 3, 1783, 8 Stat. 80 and an act of Congress approved April 6, 1812, admitting the State of Louisiana into the Union of the United States of America, United States Statutes at Large, Chapter 50, Volume 2, page 701, and other applicable law involving the determination of boundaries. Accordingly, an interpretation of the said doctrines and treaty as they affect or may affect the boundary between the State of Mississippi and the State of Louisiana must be made pursuant to the



Constitution of the United States and federal law involving the question of the interpretation and application of federal law and jurisdiction.

## 6.

This controversy involves a dispute between citizens in different states having separate and independent claims; a dispute between citizens of one state and the sovereign it self [sic] of another state, i.e., the State of Louisiana and the Lake Providence Port Commission, an agency and instrumentality of the State of Louisiana; as well as a dispute between two sovereigns, the State of Louisiana and the State of Mississippi, concerning the location of the boundary line between the two states.

## 7.

A final determination of this controversy will involve not only the location of a proper boundary line between the State of Louisiana and the State of Mississippi for all times pertinent to the issues herein, but also a judgment adjudicating the lands in question to the proper parties as owners thereof as between plaintiffs, defendants, intervenors and third-party defendant, the State of Mississippi.

## 8.

Third-party plaintiffs show that a large and substantial portion of the lands in question are owned by the State of Louisiana and/or the Lake Providence Port Commission; a large and substantial portion of the lands in

question are owned by residents of the State of Louisiana; and, accordingly, said parties are entitled to a declaration of their rights and other legal relations as against plaintiffs and third-party defendant, the State of Mississippi, as set forth hereinabove and as may be found by the Court to be applicable to this cause.

## 9.

Third-party plaintiffs show that a final determination will also involve the location of a proper boundary line between the State of Louisiana and the State of Mississippi for all times pertinent to the issues herein and, also, a judgment adjudicating the lands in question to the proper parties as owners thereof as between plaintiffs, defendants, intervenors and third-party defendant, the State of Mississippi.

WHEREFORE, third-party plaintiffs, the State of Louisiana and the Lake Providence Port Commission, respectfully pray for judgment against third-party defendant, the State of Mississippi, as follows:

(1) That upon a final hearing hereof, judgment be entered determining the proper boundary line between the State of Louisiana and the State of Mississippi for all time periods pertinent to the issues set forth herein, according to the acts of Congress setting forth the boundaries and determination of boundaries between said two states, including application of the Equal Footing Doctrine; the Treaty of Peace concluded between the United States and Great Britain, September 3, 1783, 8 Stat. 80, and an act of Congress approved April 6, 1812, admitting the State of Louisiana into the Union of the United States

of America, United States Statutes at Large, Chapter 50, Volume 2, page 701, and other applicable law involving the question of boundary determination;

(2) That upon a final hearing thereof, judgment be entered in this cause adjudicating the lands in question to the proper parties as owners thereof, as between plaintiffs, defendants, intervenors and third-party defendant, the State of Mississippi, and further declaring the rights and other legal relations as between the parties; and

(3) For such other relief as this Court may deem appropriate.

Respectfully submitted,

STATE OF LOUISIANA

/s/ William J. Guste  
WILLIAM J. GUSTE, Jr.  
Attorney General

/s/ Gary L. Keyser  
GARY L. KEYSER, Lead Counsel  
Assistant Attorney General  
7434 Perkins Road, Suite C  
Baton Rouge, Louisiana 70808  
(504) 765-2416

Please Serve:

Plaintiffs, through counsel of record:

Mr. Robert R. Bailess  
Mr. Geoffrey C. Morgan  
WHEELLESS, BEANLAND, SHAPPLEY  
& BAILESS  
Post Office Box 991  
Vicksburg, MS 39180

Defendants, through counsel of record:

Mr. George F. Fox, Jr.  
McINTOSH, FOX & LANCASTER  
301 Morgan Street  
Lake Providence, LA 71254

Third-Party Defendant, State of Mississippi through:

Honorable William A. Allain  
Governor of Mississippi  
Post Office Box 139  
Jackson, Mississippi 39205

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UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION

JULIA DONELSON HOUSTON, ET AL,  
PLAINTIFFS

V. CIVIL ACTION  
RUTH M. THOMAS, ET AL, NO. W 86-0080(B)  
DEFENDANTS

ANSWER OF THE STATE OF MISSISSIPPI  
TO THIRD-PARTY COMPLAINT

COMES NOW the State of Mississippi by and through Mike Moore, Attorney General of the State of Mississippi and in response to the Third-Party Complaint filed herein in the above styled and numbered cause would answer as follows:

FIRST DEFENSE

1. The third-party Defendant admits the allegations contained in paragraph 1.
2. The third-party Defendant admits the allegations contained in paragraph 2.
3. The third-party Defendant admits the allegations contained in paragraph 3.
4. The third-party Defendant admits the allegations contained in paragraph 4.
5. The third-party Defendant denies the allegations in paragraph 5 except that the third-party Defendant admits that an interpretation of applicable doctrines and

treaties and determination of the boundary between the State of Mississippi and the State of Louisiana must be made pursuant to the Constitution of the United States and applicable federal law.

6. The third-party Defendant admits the allegations in paragraph 6.

7. The third-party Defendant admits the allegations in paragraph 7.

8. The third-party Defendant admits that paragraph 8 of the Third-Party Complaint states the legal position of the State of Louisiana but denies the material allegations of paragraph 8 of the Third-Party Complaint.

9. The third-party Defendant admits the allegations in paragraph 9.

SECOND DEFENSE

The property which is the subject of this litigation is located in the State of Mississippi pursuant to the Act of Congress approved March 1, 1817, admitting the State of Mississippi to the Union of the United States of America, which Act is found at 3 Stat. 348, Chapter 23; the Equal Footing Doctrine; and the Treaty of Peace concluded between the United States and Great Britain on September 3, 1783, 8 Stat. 80. This property is, therefore, subject to the exclusive and complete jurisdiction of the State of Mississippi.

WHEREFORE, PREMISES CONSIDERED, the third-party Defendant respectfully prays that this Court will (1) adjudicate and declare that the subject lands are located



within the territorial boundaries of the State of Mississippi; (2) adjudicate and declare the proper boundary line between the State of Louisiana and the State of Mississippi according to all applicable law; (3) adjudicate the lands in question to the proper parties as owners thereof, as between Plaintiff and Defendant, Intervenor and third-party Defendant and (4) for such other and further relief as this Court may deem proper, equitable and just.

Respectfully submitted,

STATE OF MISSISSIPPI

MIKE MOORE  
ATTORNEY GENERAL

FRANK SPENCER  
ASSISTANT ATTORNEY  
GENERAL

BY: Helen Wetherbee  
Helen Wetherbee  
Special Assistant Attorney  
General

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IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION

JULIA DONELSON HOUSTON, ET AL.

VERSUS

CIVIL ACTION

RUTH M. THOMAS, ET AL.

NO. W86-0080(B)

\*\*\*\*\*

MOTION FOR SEPARATE TRIAL OF  
INTERSTATE BOUNDARY ISSUE

NOW INTO COURT, comes the State of Louisiana and the Lake Providence Port Commission, intervenors in the above entitled cause, who move the Court to order, pursuant to Rule 42(b) and 20(b) of the Federal Rules of Civil Procedure (28 USCA) that the issue of the location of the legal boundary between the States of Mississippi and Louisiana be the subject of a special proceeding separate and apart from and in advance of the determination of the issues of ownership and possession of the original Island Ninety-Four (94) and/or the accretionary features or islands against the west bank of the river in the vicinity of Lake Providence, Louisiana.

Intervenor move the Court for a separate trial of the interstate boundary issue on the ground that the separate trial will expedite a determination of all issues; will permit a more orderly disposition of the case by avoidance of confusion on the competing issues of ownership and possessory acts; will assist the Court in defining the limits of its jurisdiction; will reduce the inconvenience to the parties and to the Court; and may well reduce the



expenses to all concerned, as well as the time required by the Court.

Respectfully submitted,  
 WILLIAM J. GUSTE, JR.  
 Attorney General  
 GARY L. KEYSER  
 Assistant Attorney General  
 DAVID C. KIMMEL  
 Assistant Attorney General  
 H. GLEN KENT, JR.  
 Special Assistant Attorney  
 General

BY: Gary L. Keyser  
 GARY L. KEYSER  
 Assistant Attorney General  
 Post Office Box 94095  
 Baton Rouge, LA 70804-9095  
 (504) 342-7900

---

IN THE UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF MISSISSIPPI  
 WESTERN DIVISION

JULIA DONELSON HOUSTON, ET AL.

VERSUS

CIVIL ACTION

RUTH M. THOMAS, ET AL. NO. W86-0080(B)

\*\*\*\*\*

MEMORANDUM IN SUPPORT OF  
INTERVENORS' MOTION FOR SEPARATE TRIAL OF  
INTERSTATE BOUNDARY ISSUE

MAY IT PLEASE THE COURT:

The original complaint filed herein is styled as a Complaint to Remove Cloud and identifies numerous plaintiffs as the owners in fee simple title of a certain tract of land purportedly lying in Mississippi, described with particularity in paragraph 52 of the complaint.

Complainants recite their title as having derived from patents of the United States of America, subsequently recorded in Mississippi. Thereafter, complainants allege that Stack Island was affected by the divided flows of the Mississippi River into the natural erosion and accretion processes of the river, gradually migrating southward and westward.

Intervenors show the Court that the Stack Island now existing in the vicinity of the *east* bank of the Mississippi River is in approximately the same location as the original Stack Island patented by the United States on December 29, 1888 to Stephen B. Blackwell, both of said islands being located in Township 11 North, Range 9 West of Choctaw Meridian, Mississippi.

The two accretionary features adjacent to the *west* bank of the Mississippi River at Lake Providence, Louisiana, are entirely different island formations from the original No. Ninety-Four (94), as well as the currently existing Stack Island adjacent to the *east* bank of the Mississippi River.

Intervenors show the Court that where a river such as the Mississippi River forms the boundary between two states, the thalweg defines the boundary, and the ordinary course of traffic on the river defines the thalweg, except where a former thalweg has become dead or frozen. Where there is a live thalweg, it determines the boundary between states.

The determination of the legal boundary between the states by the Court will determine the limits of the jurisdiction of the Court, and may result in a determination that the ownership of the property in question is outside the limits of the Court's jurisdiction. Louisiana contends that the thalweg defines the boundary between the two states and that the legal thalweg at the time of the federal patent of Island No. Ninety-Four (94) was east of the island and became immobilized there by an avulsive change in the river. Accordingly, if the Court makes this finding as to the legal boundary, it may not have jurisdiction to make a determination regarding the ownership of the original Island No. Ninety-Four (94) or the accretionary features against the west bank of the river in the vicinity of Lake Providence, Louisiana. Similarly, the Court may not have jurisdiction unless it determines that the legal thalweg is west of the accretionary features against the west bank of the river, placing it somewhere

near or west of the westerly levee of the Mississippi River.

Consequently, it is felt that the Court and the parties will avoid much delay, inconvenience and expense and the proceedings will be simplified and a more orderly disposition of the case permitted by a separate trial of the boundary issue in advance of the issues of ownership and possessory acts. All of the maps, hydrographic charts and other boundary-related exhibits will be offered whether or not the case is bifurcated, but in the event the Court determines that the legal boundary between the two states has for all pertinent periods of time been east of Island No. Ninety-Four (94), it will be unnecessary for the parties to put on voluminous evidence concerning alleged acts of ownership and possession.

This evidence includes numerous deeds and records from the several parties pertaining to both Mississippi and Louisiana residents; oil and gas leases; hunting and agricultural leases; letters; tax bills and receipts; and other documents requiring testimonial identification.

Parenthetically, purported evidence of ownership and possession will be unnecessary should the Court determine that the property at issue is outside the jurisdictional limits of the Court.

Of course, both Mississippi and Louisiana will introduce documentary evidence and testimony concerning acts of ownership and possession, as will the Board of Commissioners for the Fifth Louisiana Levee District, recently made a defendant in the case.

The presentation of such evidence will add days of time to the trial, and may be unnecessary. At the very least, the suggested bifurcation will have the effect of reducing the need for some testimony and exhibits, and, thus, the length of the trial.

Most importantly, the suggested bifurcation will permit a more orderly disposition of the case by allowing the parties to litigate one issue at a time, rather than interjecting all elements of boundary, ownership and title and all testimony and evidence pertinent to each at one time. For instance, the plaintiff would be obligated to go forward on all three issues and present evidence on all at one time, and the opposing parties would likewise be compelled to go forward on all issues, when much of this may be unnecessary in the light of the supervening issue of boundary.

It is submitted that the most efficient and orderly procedure for handling the case would be to make the interstate boundary issue the subject of a special proceeding in advance of the determination of the issues of ownership and possession. Nothing would be lost to any party in following such a procedure, regardless of what determination might be made as to the boundary, because evidence and testimony concerning the issues of ownership and possession could and should follow logically behind the boundary question.

Accordingly, movants pray that the Court enter an order herein for a separate trial on the issue of the location of the legal boundary between the States of Mississippi and Louisiana, to be held in advance of the determination of the issues of ownership and possession

of the original Island No. Ninety-Four (94) and/or the accretionary features or islands against the west bank of the river in the vicinity of Lake Providence, Louisiana.

It is respectfully submitted that the separate trial requested will expedite a determination of all issues and will permit a more orderly disposition of the case. Additionally, it will assist the Court in defining the limits of its jurisdiction and will reduce the inconvenience to the parties and to the Court in trying all issues simultaneously.

Respectfully submitted,  
WILLIAM J. GUSTE, JR.  
Attorney General

GARY L. KEYSER  
Assistant Attorney General

DAVID C. KIMMEL  
Assistant Attorney General

H. GLEN KENT, JR.  
Special Assistant Attorney  
General

BY: Gary L. Keyser  
GARY L. KEYSER  
Assistant Attorney General  
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IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION

JULIA DONELSON HOUSTON, ET AL      PLAINTIFFS  
CIVIL ACTION  
NO. W86-0080(B)

VS.

RUTH M. THOMAS, ET AL                      DEFENDANTS

ORDER

(Filed May 5, 1989)

\* \* \*

1. This cause shall be bifurcated and separated into two trials, the first of the said trials shall be for the purpose of determining the location of the state boundary line between the State of Mississippi and the State of Louisiana, with regard to the property involved in this cause, and all issues relative thereto shall be heard by this Court beginning June 19, 1989 to determine the said state boundary line.

2. With regard to the first said trial, the State of Louisiana and the Lake Providence Port Commission are each hereby ordered to file separate motions and statements of position of what specific interest the State of Louisiana and the Lake Providence Port Commission has acquired by quitclaim deeds from defendants in this cause, said motions and statements to be filed in order for this Court to determine which defendants, if any, should be dismissed as a result of the execution of the said quitclaim deeds to the Lake Providence Port Commission and which said defendants should remain parties.

3. The said State of Louisiana and the Lake Providence Port Commission shall each file a statement of position with regard to whether the State of Louisiana and/or the Lake Providence Port Commission claim any interest in property that is the subject of this suit if this Court determines that the subject property lies within the State of Mississippi. The State of Louisiana and the Lake Providence Port Commission are each also hereby ordered to make a separate definite statement of the specific claims, if any, of the State of Louisiana and the Lake Providence Port Commission to the said property if it is determined by this Court to lie within the State of Mississippi. All of the filing referred to above in all preceding paragraphs shall be accomplished by the State of Louisiana and the Lake Providence Port Commission by May 16, 1989 by filing with the Clerk and by forwarding copies to all counsel of record.

4. The second trial, if necessary, shall be set by the Court after the conclusion of the first trial.

\* \* \*

SO ORDERED AND ADJUDGED, this 5th day of May, 1989.

/s/ William H. Barbour, Jr.  
UNITED STATES DISTRICT JUDGE

A TRUE COPY, I HEREBY CERTIFY.

Clarence A. Pierce, CLERK

By:

/s/ Ann Nelson  
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION

JULIA DONELSON HOUSTON, ET AL.

CIVIL ACTION  
NO. W86-0080(B)

VERSUS

RUTH M. THOMAS, ET AL.

STATEMENT OF POSITION OF THE STATE OF LOUISIANA AND LAKE PROVIDENCE PORT COMMISSION

NOW INTO COURT, come the State of Louisiana and the Lake Providence Port Commission, Intervenor in the above entitled cause, who, pursuant to the oral orders of this Court of May 1, 1989, make this statement of position with regard to their claims to property which may be affected by a determination of the location of the legal boundary between the States of Mississippi and Louisiana.

It is the position of Intervenor that the boundary between the states lies along the thalweg, and the ordinary course of traffic on the river for all pertinent periods of time defines the thalweg, except where a former thalweg has become dead or frozen. An avulsive change occurred in 1882 when the tract of navigation or thalweg of the Mississippi River was suddenly and avulsively diverted from east channel Stack Island Chute on the Mississippi side of Stack Island to the Louisiana side of Stack Island by the construction of dikes across the head of the chute. The thalweg was thus immobilized in east

Stack Island Chute, freezing the boundary in that location.

As a general proposition, the thalweg lies in the middle of the main navigation channel of the Mississippi River as the main navigation channel exists today, subject to the avulsive change which took place in 1882, as described above. Intervenor would not accept any other boundary as being the true legal boundary between the states.

Consequently, Intervenor claim all accretion, all island formations and the accretionary features adjacent to the west bank of the Mississippi River, all lying west of the main navigation channel and formed in the bed and bottom of that portion of the Mississippi River owned by Louisiana by its inherent sovereignty.

Intervenor do not claim the currently existing Stack Island adjacent to the east bank of the Mississippi River

in the same location as the original Stack Island patented to Stephen B. Blackwell in 1888.

Respectfully submitted,  
 WILLIAM J. GUSTE, JR.  
 Attorney General  
 GARY L. KEYSER  
 Assistant Attorney General  
 DAVID C. KIMMEL  
 Assistant Attorney General  
 H. GLEN KENT, JR.  
 Special Assistant Attorney  
 General

BY: /s/ Gary L. Keyser  
GARY L. KEYSER  
 Assistant Attorney General  
 State of Louisiana  
 Post Office Box 94095  
 Baton Rouge, LA 70804-9095  
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UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF MISSISSIPPI  
 WESTERN DIVISION

JULIA DONELSON HOUSTON, ET AL.

CIVIL ACTION  
 NO. W86-0080(B)

VERSUS

RUTH M. THOMAS, ET AL.

\*\*\*\*\*

SUPPLEMENTAL STATEMENT OF POSITION OF THE  
STATE OF LOUISIANA AND LAKE PROVIDENCE PORT  
COMMISSION

NOW INTO COURT, come the State of Louisiana and the Lake Providence Port Commission, Intervenor in the above entitled cause, who, pursuant to the orders of this Court of May 5, 1989, make this supplemental statement of position with regard to their claims to property which may be affected by a determination of the location of the legal boundary between the States of Mississippi and Louisiana.

Intervenors reiterate all prior claims and statement of position regarding the boundary between the states.

Intervenors claim all accretion, all island formations and the accretionary features adjacent to the west bank of the Mississippi River, all lying west of the main navigation channel and formed in the bed and bottom of that portion of the Mississippi River owned by Louisiana by its inherent sovereignty.

Furthermore, Intervenor asserts a claim of possession and ownership to the currently existing Stack Island/



Bailshed [sic] Toehead lying in proximity to the east bank of the Mississippi River in the same location as the original Stack Island patented to Stephen B. Blackwell in 1888. It has been determined that the avulsive change which occurred in 1882 immobilized the thalweg boundary in East Stack Island chute. Subsequently, the Stack Island formation existing in 1882 disappeared and reappeared, again west of the said frozen boundary. Consequently, the Stack Island/Bails Headtoe Head [sic] accretionary formation now existing has formed in the bed and bottom of the Mississippi River lying within the sovereign territory of Louisiana. As a consequence, any prior ownership was lost and regained by Louisiana upon the re-emergence of the accretionary formation within the sovereign territory of Louisiana, pursuant to the Equal Footing Doctrine.

Further, Intervenor, the State of Louisiana, shows the Court that the long continued possession by Louisiana residents over the accretionary formations to their riparian property on the west bank of the Mississippi River together with the long continued exercise of possession and jurisdiction by the State of Louisiana over the developing island formations in the Mississippi River, and the acquiescence in such possession, ownership and exercise of such Louisiana jurisdiction by the State of Mississippi and its resident shows conclusively that the de facto and de jure exercise of sovereignty and dominion over the said accretionary lands is with the State of Louisiana.

Intervenor, the State of Louisiana, further shows that by Act No. 44 of the Acts of the General Assembly of the State of Louisiana, approved July 2, 1886, and by Act No. 191 of the General Assembly of the State of Louisiana, approved July 6, 1908, it has clearly and unequivocally

exercised possession, ownership, jurisdiction, regulation and dominion over the accreted lands in question. As will be seen by a reading of Act 191 of the 1908 Regular Session, all lands belonging to the State of Louisiana embraced in the original grants by Congress to the State of Louisiana for levee and drainage purposes located within the parishes of the Fifth Louisiana Levee District were transferred to the said district, including all islands formed in the bed of the Mississippi River.

Further, the Louisiana Supreme Court, in *State ex rel. Board of Commissioners for Fifth Louisiana Levee District v. Capdevielle*, 54 So. 820 (Sup. Ct. 1911), recognized that Act 191 of 1908 granted to the Board of Commissioners for the Fifth Louisiana Levee District all islands in the Mississippi River within the limits of the Parishes of East Carroll, Madison, Tensas and Concordia. The islands thereby transferred are shown on the index to islands in the Mississippi River owned by the Fifth Louisiana Levee District, being numbered 1-20, several of which are in the vicinity of this controversy.

Therefore, all such islands and other lands which formerly constituted or were a part of the bed of the Mississippi River have been granted to the Board of Commissioners for the Fifth Louisiana Levee District, a political subdivision of the State of Louisiana. This transfer of ownership and the assertion of jurisdiction, possession and ownership of the said Fifth Louisiana Levee District has never been questioned by plaintiffs or by the State of Mississippi.

Consequently, Intervenor claim all accretion, all island formations, all accretionary features and all sand

bars lying west of the main navigation channel and/or thalweg of the Mississippi River, which are owned by Louisiana by virtue of its inherent sovereignty.

Respectfully submitted,  
 WILLIAM J. GUSTE, JR.  
 Attorney General  
 GARY L. KEYSER  
 Assistant Attorney General  
 DAVID C. KIMMEL  
 Assistant Attorney General  
 H. GLEN KENT, JR.  
 Special Assistant Attorney  
 General

BY: /s/ Gary L. Keyser  
 GARY L. KEYSER  
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 Post Office Box 94095  
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IN THE UNITED STATES DISTRICT COURT  
 FOR THE SOUTHERN DISTRICT OF  
 MISSISSIPPI, WESTERN DIVISION

JULIA DONELSON HOUSTON, ET AL PLAINTIFFS  
 VS. CIVIL ACTION NO. W86-0080(B)  
 RUTH M. THOMAS, ET AL DEFENDANTS

PROPOSED FINDINGS OF FACT AND  
CONCLUSIONS OF LAW OF THE PLAINTIFFS  
 [Submitted in June 1989]

FINDINGS OF FACT

1. Island Number 94, the property known as Stack Island, Mississippi, was subject to the divided flows of the Mississippi River and to the natural erosion and accretion processes of this dynamic alluvial river, and was gradually, progressively and imperceptibly enlarged southward and westward until it reached its present location. Further, from the time of the formation of Stack Island, the island and its accretions have been bounded on the West by the Mississippi River channel thalweg-interstate boundary (Mississippi-Louisiana), and bounded on the East by the chute channel, which has a bed that lies entirely within Mississippi.

2. After about 1908, the River gradually enlarged the bounding chute channel East. Further, in about the year 1913, the enlarging Mississippi chute channel was adopted for navigation.

3. After about the year 1925, the bounding Mississippi chute channel continued to enlarge and flows increased therein with corresponding lessening of flows

in the Mississippi-Louisiana boundary channel on the West. Further, by about 1934, divided flow conditions were favorable for the formation of accretions to the foot of Stack Island and for the river to gradually and finally abandon the old Mississippi-Louisiana channel West of Stack Island. By the year 1954, this old abandoned channel had become attenuated and filled by alluvium (silt and sand). By the year 1962, the old channel along Haganman Revetment in Lake Providence Bend became attenuated and filled by alluvium.

4. The enlargement of the former East chute channel of the Mississippi River and the corresponding abandonment of the West bounding channel was avulsive in nature and did not operate to change the ownership of the property of Plaintiffs but, by reason of the said avulsive action, the Mississippi-Louisiana state boundary became firmly and finally fixed along the locus of the middle of the former main navigation channel, sometimes called the thalweg, which former channel is identical with the West boundary of the lands of Plaintiffs, known as Stack Island, and as described in Paragraph 52 of the Complaint.

5. The Plaintiffs and their predecessors in title have, for more than ninety years next preceding the filing of the Complaint, been in the exclusive uninterrupted, hostile, open and notorious possession of Stack Island and accretions thereto claiming to own them as against the world. The acts of possession exercised over the said lands by Plaintiffs and their predecessors in title, among others, have consisted of the payment of taxes on said lands, the cutting of timber therefrom, the posting of said land against trespassers, the leasing of said land for grazing

purposes, the leasing of said land for hunting purposes, the granting of an oil, gas and mineral lease, and the cultivation thereof. The possession of Plaintiffs and their claim of ownership to the said property has been well known and recognized in the community, both in Mississippi and in Louisiana.

6. Plaintiff, Ruth H. Baker, and the other plaintiffs' predecessor in title brought an action in the Chancery Court of Issaquena County, Mississippi to quiet their title to the aforesaid lands naming as defendants the then owners of the adjoining Louisiana lands. A Final Decree was entered on May 7, 1968 adjudging that none of the defendants named therein had any right, title or interest in the subject lands and any claims thereto asserted by the defendants were cancelled. The said Final Decree is res judicata against the said defendants named in the final decree.

7. The said westerly boundary of the property of Plaintiffs has been long recognized and acquiesced in as the boundary between the Plaintiffs and the Louisiana landowners and as to the State of Louisiana.

8. Stack Island, Island No. 94, has long been recognized and acquiesced in as being in the State of Mississippi. The State of Mississippi has long exercised sovereignty and dominion over Stack Island and Louisiana has acquiesced in the possession and exercise of sovereignty and dominion by the State of Mississippi and citizens of the State of Mississippi.



### CONCLUSIONS OF LAW

1. When a navigable river constitutes the boundary between two states, the thalweg defines the boundary. The thalweg is the lowest part of the river bed in the direction of its flow, or the deep channel of the river. If there be more than one channel of a river, the deepest channel is regarded as the navigable channel for the purpose of territorial demarcation; and the boundary line will be drawn along the surface of the stream corresponding to the line of deepest depression in the bed of the river.

2. If a river suddenly abandons its navigation course or thalweg and forms a new one by the process known as avulsion, the resulting change of the thalweg works no change of the boundary although water may be flowing in it and irrespective of subsequent changes in the new channel. So long as the channel remains a running stream, the boundary marked by it is still subject to be changed by erosion and accretion; but when the water becomes stagnant, the effect of these processes is at an end. This avulsive change in the thalweg establishes a fixed boundary in the abandoned channel at the deepest part of the abandoned channel. This fixed boundary becomes fixed in the deepest part of the bed of the abandoned channel when the water ceases to flow in the abandoned channel. The bed which the river has abandoned becomes the boundary, and remains the property of the former owner of the river, and the river itself is, as it were, annihilated in all that part, while it is reproduced in its new bed and there belongs only to the state in which it flows.

3. When a navigable stream changes its main channel of navigation, not by creeping over the intermediate lands between the old channel and the new one, but by jumping over them or running around them and making or adopting a new course, the boundary remains in the old channel subject to subsequent changes in that channel wrought by accretion and erosion while the water in it remains a running stream, notwithstanding the fact that the change from the old channel to the new one was wrought gradually during several years by the increase from year to year of the proportion of the waters of the river passing over the course which eventually became the new channel, and the decrease from year to year of the proportion of its waters passing through the old channel until finally the new channel became the main channel of navigation.

Islands are within the territorial limits of the state as bounded by rivers or other waters in the same manner as is the mainland of that state.

Additions to an island by gradual processes should be treated as part of the island and as subject to the same jurisdiction.

The fact that an island at no time since the admission into a state has entirely disappeared, but changes have been caused by processes of erosion and accretion, allows the island to remain under the jurisdiction of the state into which it was admitted.

Once the navigation channel of the river abandons the old channel around an island, the state boundary remains as it was prior to the change. The state boundary line does not become fixed until the water in the old

channel ceases to flow as a running stream and becomes stagnant.

So long as the channel remains a running stream, the boundary marked by it is still subject to be changed by erosion and accretion; but when the water becomes stagnant, the effect of these processes is at an end; the boundary then becomes fixed in the middle of the channel, and the gradual filling up of the bed that ensues is not to be treated as an accretion to the shores, but as an ultimate effect of the avulsion. The emergence of the land, however, may or may not follow, and it ought not in reason to have any controlling effect upon the location of the boundary line in the old channel.

How the land that emerges on either side of an interstate boundary stream shall be disposed of as between public and private ownership is a matter to be determined according to the law of each state, under the familiar doctrine that it is for the states to establish for themselves such rules of property as they deem expedient with respect to the navigable waters within their borders and the riparian lands adjacent to them.

4. Land formations appearing or forming on the river are owned by the owner of the bed of the river.

5. Lands forming by the process of accretions within the State of Louisiana are the property of the riparian owner only when the accretions are formed by the deposition of the alluvium against the bank of the river.

6. Accretions to land formed within the State of Mississippi belong either to the owner of the bank against

which accretions begin to form or else to the riparian owner by virtue of ownership of the river bed out to the state boundary line thalweg.

7. Accretions may be defined as an addition to riparian land, generally and imperceptibly [sic] made by the water to which the land is contiguous. It is different from reliction and is the opposite of avulsion. The test as to what is gradual and imperceptible in the sense of the rule is, that though the witnesses may see from time to time that progress has been made, they could not perceive it while the process was going on. Whether it is the effect of natural or artificial causes makes no difference. The result as to the ownership in either case is the same.

8. The United States of America surveyed Island No. 94, Stack Island, as being located within the State of Mississippi in 1881. The property known as Stack Island, Mississippi, was subject to the divided flows of the Mississippi River and to the natural erosion and accretion processes of the River and was gradually, progressively and imperceptively enlarged southward and westward until it reached its present location. Stack Island and its accretions have been bounded on the west by the Mississippi river channel thalweg-interstate boundary and bounded on the east by the chute channel. The fixed state boundary is identical with the west bounds of Stack Island as described in Paragraph 52 of the Complaint.

9. The Plaintiffs own Stack Island and its accretions as against the world.

10. The Final Decree of the Chancery Court of Issaquena County, Mississippi, entered on May 7, 1968, is res



11. The long acquiescence by one state in the possession of territory by another state and by citizens of said second state and in the exercise of sovereignty and dominion over it is conclusive of the latter state's title and rightful authority. Stack Island and the westerly boundary of the property of Plaintiffs has been long recognized and acquiesced in as the property of the Plaintiffs with the old abandoned bed of the river between Stack Island and the Louisiana mainland being recognized as the State boundary as well as the private boundary between the Plaintiffs and the Louisiana landowners.

12. None of the defendants or the intervenors have any right, title or interest in the lands known as Stack Island and as described in Paragraph 52 of the Complaint and all clouds heretofore existing on the title of plaintiffs in and to said property as against all claims of the defendants or intervenors are removed and cancelled.

13. By virtue of the long continued possession by Mississippi plaintiffs, there is a presumption of a lost grant from the State of Louisiana to Plaintiffs' predecessors in title.

Respectfully submitted,  
/s/ Robert R. Bailess  
**ROBERT R. BAILESS**  
Attorney for Plaintiffs

JULIA DONELSON HOUSTON, ET AL      PLAINTIFFS  
VS.                          CIVIL ACTION NO. W86-0080(B)  
RUTH M. THOMAS, ET AL                DEFENDANTS

**PROPOSED FINDINGS OF FACT AND  
CONCLUSIONS OF LAW OF THE PLAINTIFFS**

[Submitted in March 1989]

## FINDINGS OF FACT

1. Island Number 94, the property known as Stack Island, Mississippi, was subject to the dividend flows of the Mississippi River and to the natural erosion and accretion processes of this dynamic alluvial river, and was gradually, progressively and imperceptibly enlarged southward and westward until it reached its present location. Further, from the time of the formation of Stack Island, the island and its accretions have been bounded on the West by the Mississippi River channel thalweg-interstate boundary (Mississippi-Louisiana), and bounded on the East by the chute channel, which has a bed that lies entirely within Mississippi.

2. After about 1908, the River gradually enlarged the bounding chute channel East. Further, in about the year 1913, the enlarging Mississippi chute channel was adopted for navigation.

3. After about the year 1925, the bounding Mississippi chute channel continued to enlarge and flows increased therein with corresponding lessening of flows in the Mississippi-Louisiana boundary channel on the



West. Further, by about 1934, divided flow conditions were favorable for the formation of accretions to the foot of Stack Island and for the river to gradually and finally abandon the old Mississippi-Louisiana channel West of Stack Island. By the year 1954, this old abandoned channel had become attenuated and filled by alluvium (silt and sand). By the year 1962, the old channel along Haganman Revetment in Lake Providence Bend became attenuated and filled by alluvium.

4. The enlargement of the former East chute channel of the Mississippi River and the corresponding abandonment of the West bounding channel *was avulsive in nature* and did not operate to change the ownership of the property of Plaintiffs but, by reason of the said avulsive action, the Mississippi-Louisiana state boundary became firmly and finally fixed along the locus of the middle of the former main navigation channel, sometimes called the thalweg, which former channel is identical with the West boundary of the lands of Plaintiffs, known as Stack Island, and as described in Paragraph 52 of the Complaint.

5. The Plaintiffs and their predecessors in title have, for more than ninety years next preceding the filing of the Complaint, been in the exclusive uninterrupted, hostile, open and notorious possession of Stack Island and accretions thereto claiming to own them as against the world. The acts of possession exercised over the said lands by Plaintiffs and their predecessors in title, among others, have consisted of the payment of taxes on said lands, the cutting of timber therefrom, the posting of said land against trespassers, the leasing of said land for grazing purposes, the leasing of said land for hunting purposes,

the granting of an oil, gas and mineral lease, and the cultivation thereof. The possession of Plaintiffs and their claim of ownership to the said property has been well known and recognized in the community, both in Mississippi and in Louisiana.

6. Plaintiff, Ruth H. Baker, and the other plaintiffs' predecessor in title brought an action in the Chancery Court of Issaquena County, Mississippi to quiet their title to the aforesaid lands naming as defendants the then owners of the adjoining Louisiana lands. A Final Decree was entered on May 7, 1968 adjudging that none of the defendants named therein had any right, title or interest in the subject lands and any claims thereto asserted by the defendants were cancelled. The said Final Decree is *res judicata* against the said defendants named in the final decree.

7. The said westerly boundary of the property of Plaintiffs has been long recognized and acquiesced in as the boundary between the Plaintiffs and the Louisiana landowners and as to the State of Louisiana.

#### CONCLUSIONS OF LAW

1. When a navigable river constitutes the boundary between two states, the thalweg defines the boundary. The thalweg is the lowest part of the river bed in the direction of its flow, or the deep channel of the river. If there be more than one channel of a river, the deepest channel is regarded as the navigable channel for the purpose of territorial demarcation; and the boundary line

will be drawn along the surface of the stream corresponding to the line of the deepest depression in the bed of the river.

2. If a river suddenly abandons its navigation course or thalweg and forms a new one by the process known as avulsion, the resulting change of the thalweg works no change of the boundary although water may be flowing in it and irrespective of subsequent changes in the new channel. So long as the channel remains a running stream, the boundary marked by it is still subject to be changed by erosion and accretion; but when the water becomes stagnant, the effect of these processes is at an end. This avulsive change in the thalweg establishes a fixed boundary in the abandoned channel at the deepest part of the abandoned channel. This fixed boundary becomes fixed in the deepest part of the bed of the abandoned channel when the water ceases to flow in the abandoned channel. The bed which the river has abandoned becomes the boundary, and remains the property of the former owner of the river, and the river itself is, as it were, annihilated in all that part, while it is reproduced in its new bed and there belongs only to the state in which it flows.

3. Land formations appearing or forming on the river are owned by the owner of the bed of the river.

4. Lands forming by the process of accretions within the State of Louisiana are the property of the riparian owner only when the accretions are formed by the deposition of alluvium against the bank of the river.

5. Accretions to land formed within the State of Mississippi belong either to the owner of the bank against

which accretions begin to form or else to the riparian owner by virtue of ownership of the river bed out to the state boundary line thalweg.

6. Accretions may be defined as an addition to riparian land, generally and imperceptibly made by the water to which the land is contiguous. It is different from reliction and is the opposite of avulsion. The test as to what is gradual and imperceptible in the sense of the rule is, that though the witnesses may see from time to time that progress has been made, they could not perceive it while the process was going on. Whether it is the effect of natural or artificial causes makes no difference. The result as to the ownership in either case is the same.

7. The United States of America surveyed Island No. 94, Stack Island, as being located within the State of Mississippi in 1881. The property known as Stack Island, Mississippi, was subject to the divided flows of the Mississippi River and to the natural erosion and accretion processes of the River and was gradually, progressively and imperceptively enlarged southward and westward until it reached its present location. Stack Island and its accretions have been bounded on the west by the Mississippi river channel thalweg-interstate boundary and bounded on the east by the chute channel. The fixed state boundary is identical with the west bounds of Stack Island as described in Paragraph 52 of the Complaint.

8. The Plaintiffs own Stack Island and its accretions as against the world.

9. The Final Decree of the Chancery Court of Issaquena County, Mississippi, entered on May 7, 1968, is res



judicata against the defendants named in the said Final Decree.

10. The long acquiescence by one state in the possession of territory by another state and by citizens of said second state and in the exercise of sovereignty and dominion over it is conclusive of the latter state's title and rightful authority. The westerly boundary of the property of Plaintiffs has been long recognized and acquiesced in as the property of the owners of Stack Island with the old abandoned bed of the river between Stack Island and the Louisiana mainland being recognized as the State boundary as well as the private boundary between the Plaintiffs and the Louisiana landowners.

11. None of the defendants or the intervenors have any right, title or interest in the lands known as Stack Island and as described in Paragraph 52 of the Complaint and all clouds heretofore existing on the title of plaintiffs in and to said property as against all claims of the defendants or intervenors are removed and cancelled.

12. By virtue of the long continued possession by Mississippi plaintiffs, there is a presumption of a lost grant from the State of Louisiana to Plaintiffs' predecessors in title.

Respectfully submitted,

/s/ Robert R. Bailess  
 ROBERT R. BAILESS  
 Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT  
 FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
 WESTERN DIVISION

JULIA DONELSON HOUSTON, ET AL. PLAINTIFFS  
 vs. CIVIL ACTION NO. W86-0080(B)  
 RUTH M. THOMAS, ET AL. DEFENDANTS

STATE OF MISSISSIPPI'S PROPOSED  
FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

FINDINGS OF FACT

1. Island Number 94, the property known as Stack Island, Mississippi, was subject to the divided flows of the Mississippi River and to the natural erosion and accretion processes of this dynamic alluvial river, and was gradually, progressively and imperceptibly enlarged southward and westward until it reached its present location. Further, from the time of the formation of Stack Island, the island and its accretions have been bounded on the West by the Mississippi River channel thalweg-interstate boundary (Mississippi-Louisiana), and bounded on the East by the chute channel, which has a bed that lies entirely within Mississippi.

2. After about 1908, the River gradually enlarged the bounding chute channel East. Further, in about the year 1913, the enlarging Mississippi chute channel was adopted for navigation.

3. After about the year 1925, the bounding Mississippi chute channel continued to enlarge and flows increased therein with corresponding lessening of flows in the Mississippi-Louisiana boundary channel on the



West. Further, by about 1934, divided flow conditions were favorable for the formation of accretions to the foot of Stack Island and for the river to gradually and finally abandon the old Mississippi-Louisiana channel West of Stack Island. By the year 1954, this old abandoned channel had become attenuated and filled by alluvium (silt and sand). By the year 1962, the old channel along Haganman Revetment in Lake Providence Bend became attenuated and filled by alluvium.

4. The enlargement of the former East chute channel of the Mississippi River and the corresponding abandonment of the West bounding channel was avulsive in nature and did not operate to change the ownership of the property of Plaintiffs but, by reason of the said avulsive action, the Mississippi-Louisiana state boundary became firmly and finally fixed along the locus of the middle of the former main navigation channel, sometimes called the thalweg, which former channel is identical with the West boundary of the lands of Plaintiffs, known as Stack Island, and as described in Paragraph 52 of the Complaint.

5. The said westerly boundary of the property of Plaintiffs has been long recognized and acquiesced in as the boundary between Mississippi and Louisiana.

#### CONCLUSIONS OF LAW

1. When a navigable river constitutes the boundary between two states, the thalweg defines the boundary. The thalweg is the lowest part of the river bed in the direction of its flow, or the deep channel of the river. If there be more than one channel of a river, the deepest

channel is regarded as the navigable channel for the purpose of territorial demarcation; and the boundary line will be drawn along the surface of the stream corresponding to the line of deepest depression in the bed of the river.

2. If a river suddenly abandons its navigation course or thalweg and forms a new one by the process known as avulsion, the resulting change of the thalweg works no change of the boundary although water may be flowing in it and irrespective of subsequent changes in the new channel. So long as the channel remains a running stream, the boundary marked by it is still subject to be changed by erosion and accretion; but when the water becomes stagnant, the effect of these processes is at an end. This avulsive change in the thalweg establishes a fixed boundary in the abandoned channel at the deepest part of the abandoned channel. This fixed boundary becomes fixed in the deepest part of the bed of the abandoned channel when the water ceases to flow in the abandoned channel. The bed which the river has abandoned becomes the boundary, and remains the property of the former owner of the river, and the river itself is, as it were, annihilated in all that part, while it is reproduced in its new bed and there belongs only to the state in which it flows.

3. Accretions may be defined as an addition to riparian land, generally and imperceptibly made by the water to which the land is contiguous. It is different from reliction and is the opposite of avulsion. The test as to what is gradual and imperceptible in the sense of the rule is, that though the witnesses may see from time to time that progress has been made, they could not perceive it

while the process was going on. Whether it is the effect of natural or artificial causes makes no difference. The result as to the ownership in either case is the same.

4. The United States of America surveyed Island No. 94, Stack Island, as being located within the State of Mississippi in 1881. The property known as Stack Island, Mississippi, was subject to the divided flows of the Mississippi River and to the natural erosion and accretion processes of the River and was gradually, progressively and imperceptively enlarged southward and westward until it reached its present location. Stack Island and its accretions have been bounded on the west by the Mississippi River channel thalweg-interstate boundary and bounded on the east by the chute channel. The fixed state boundary is identical with the west bounds of Stack Island as described in Paragraph 52 of the Complaint.

5. The long acquiescence by one state in the possession of territory by another state and by citizens of said second state and in the exercise of sovereignty and dominion over it is conclusive of the latter state's title and rightful authority. The westerly boundary of the property of Plaintiffs has been long recognized and acquiesced in as the property of the owners of Stack Island with the old abandoned bed of the river between Stack Island and the Louisiana mainland being recognized as the State boundary as well as the private boundary between the Plaintiffs and the Louisiana landowners.

6. None of the defendants or the intervenors have any right, title or interest in the lands known as Stack

Island and as described in Paragraph 52 of the Complaint.

Respectfully submitted,

/s/ Robert E. Sanders  
**ROBERT E. SANDERS**  
 Special Assistant Attorney  
 General  
 Attorney for State of  
 Mississippi

Office of the Attorney General  
 Post Office Box 220  
 Jackson, Mississippi 39205  
 Telephone: (601) 359-3680

#### CERTIFICATE OF SERVICE

This is to certify that I, Robert E. Sanders, a Special Assistant Attorney General for the State of Mississippi, have caused to be mailed this date, via United States Postal Service, first-class postage prepaid, a true and correct copy of the foregoing **State of Mississippi's Proposed Findings of Fact and Conclusions of Law** to the following:

M. E. Ward, Esq.  
 Ward, Martin, Terry & Williford  
 P. O. Box 789  
 Vicksburg, MS 39180

Robert R. Bailess, Esq.  
 Wheelless, Beanland, Shappley  
 & Bailess  
 P. O. Box 991  
 Vicksburg, MS 39181

Honorable Gary L. Keyser  
 Assistant Attorney General  
 P. O. Box 94095  
 Baton Rouge, LA 70804-9095

Archie L. Jefferson, Esq.  
 650 Poydras St., Suite 1850  
 New Orleans, LA 70130

Mr. William F. Naff  
 312 McLure St.  
 Tallulah, LA 71282

This, the 7th day of March, 1989.

/s/ Robert E. Sanders  
ROBERT E. SANDERS

Office of the Attorney General  
 Post Office Box 220  
 Jackson, Mississippi 39205  
 Telephone: (601) 359-3680

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IN THE UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF MISSISSIPPI  
 WESTERN DIVISION

JULIA DONELSON HOUSTON,  
 ET AL.

CIVIL ACTION NO. W86-0080(B)

VERSUS

RUTH M. THOMAS, ET AL.

\*\*\*\*\*  
PROPOSED FINDINGS OF FACT AND CONCLUSIONS  
OF LAW OF THE STATE OF LOUISIANA AND LAKE  
PROVIDENCE PORT COMMISSION

FINDINGS OF FACT:

1. Island No. Ninety-Four (94) in the Mississippi River patented by the United States on December 29, 1888 to Stephen B. Blackwell, located in Township 11 North, Range 9 West of Choctaw Meridian in Mississippi, containing one hundred seventeen and ninety-six hundredths (117.96) acres has been eroded away by the natural processes of the Mississippi River and no longer exists at its location at the time of the federal patent, as aforesaid.

2. The two accretionary features adjacent to the west bank of the Mississippi River at Lake Providence, Louisiana, sometimes referred to as "Stack Island" are entirely different island formations from the original Island No. Ninety-Four (94) and are located in a different geographic vicinity; they have different histories of origin; they are different in size and shape; and at all times since their formation in the 1930's, have been west of the boundary between the States of Louisiana and Mississippi.



3. At the time of its survey in 1881, the then-existing Island No. Ninety-Four (94) was subject to the divided flows of the Mississippi River, with the thalweg or track of navigation forming the boundary between the two states located in the east channel Stack Island Chute, thereby placing the island in Louisiana. The U.S. Deputy Surveyor, however, erroneously placed Stack Island in Mississippi, and on this basis a federal patent was issued to Stephen B. Blackwell.

4. In 1882, the track of navigation or thalweg of the Mississippi River was suddenly, perceptibly and avulsively diverted from east channel Stack Island Chute on the Mississippi side of Stack Island to the Louisiana side of said Stack Island by the construction of dikes across the head of such chute or channel. The purpose of this avulsive act by the Mississippi River Commission was to stop local bank caving on the Mississippi Shore; to improve channel alignment; and to facilitate navigation at low water stages.

5. After the construction of the dikes and the diversion in 1882, the thalweg of the Mississippi River remained fixed in the east channel Stack Island Chute, immobilized by the avulsive shift in the river. Upper and lower segments of the thalweg slowly and imperceptibly migrated back and forth in the Mississippi River where it has remained in approximately mid-channel continuously since about 1909.

6. What is today shown as Stack Island(s) on the flood control and navigation maps of the Mississippi River published by the Mississippi River Commission is not the island originally surveyed in 1881. That original

island has appeared and disappeared from time to time in different locations, but is now totally washed away.

7. All of the accretion attached to the accretionary features now sometimes referred to as "Stack Island" since about 1909 belongs to the State of Louisiana, having been formed on the bed and banks of that portion of the Mississippi River lying in Louisiana as determined by the tracks of navigation or channel lines shown on the aforementioned Flood Control and Navigation Maps.

8. No avulsion has occurred in the Lake Providence Reach of the Mississippi River since 1882 which would freeze the boundary between the States of Louisiana and Mississippi, as claimed by plaintiff. Neither the banks of the river nor the thalweg are involved in plaintiff's claim of avulsion.

9. The Lake Providence Port is partly or wholly situated on lands surveyed by U.S. Deputy Surveyors in the period of 1824-1829. A large portion of the sections involved, Sections 1 and 2 of T10N-R13E of the Louisiana Land District North of Red River were eroded away by action of the river and subsequently restored by accretion.

10. Various agencies and instrumentalities of the State of Louisiana have exercised power, jurisdiction and dominion over the lands in question for many years, including the Lake Providence Port Commission, the Fifth Louisiana Levee District, the East Carroll Parish Sheriff's Office, the East Carroll Parish Tax Assessor's Office, the Louisiana Tax Commission, the Louisiana Department of Wildlife and Fisheries, the Louisiana Department of Public Works, the Louisiana Department

of Transportation and Development and the U.S. Army Corps of Engineers.

11. No agencies or instrumentalities of the State of Mississippi have exercised power, jurisdiction or dominion over the lands at issue.

12. Louisiana Residents have exercised ownership, power and dominion over the lands at issue, and have paid ad valorem taxes in the maintenance of their ownership to the said lands.

13. While Mississippi residents have purported to exercise ownership and/or possession over the lands at issue, they have done so in the mistaken belief that the claims of their ancestors in title to Island No. Ninety-Four (94) gave them such rights, not realizing that they were dealing with entirety [sic] different lands.

#### PROPOSED CONCLUSIONS OF LAW:

1. Where a river forms the boundary between two states, the thalweg defines the boundary, and the ordinary course of traffic on the river defines the thalweg, except where a former thalweg has become dead or frozen.

2. In the case of river boundaries definable by a live thalweg, the live thalweg is the boundary between states.

3. If a river suddenly abandons its navigation course or thalweg and forms a new one by the process known as avulsion, whether because of natural or artificial works, the resulting change of the main course works no change of boundary, which remains in the middle of the former channel, although water may be flowing in it.

Stated another way, an avulsive change in the main river course establishes a fixed boundary located in the center of the abandoned main channel, whether by natural or artificial works; i.e., the boundary remains as it was prior to the avulsive change, the center line of the old channel.

4. At the time of its survey in 1881, the then existing Island No. Ninety-Four (94) was subject to the divided flows of the Mississippi River, with the thalweg or track of navigation forming the boundary between the two states located in the east channel Stack Island Chute, thereby placing the land in Louisiana. The U.S. Deputy Surveyor erroneously placed Stack Island in Mississippi, and on this basis a federal patent was issued to Stephen B. Blackwell.

5. In 1882, the sudden and avulsive diversion of the Mississippi River from east channel Stack Island Chute on the Mississippi side of Stack Island to the Louisiana side of Stack Island by the construction of dikes across the head of the chute by the Mississippi River Commission caused the then existing thalweg in east channel Stack Island Chute to become dead or frozen, thus immobilizing the legal thalweg and boundary between the states.

6. Following the diversion of the live thalweg by the Mississippi River Commission construction program, the frozen thalweg remain fixed in the east channel Stack Island Chute, while the segments of the live thalweg above and below Stack Island slowly and imperceptibly migrated back and forth in the Mississippi River. The live thalweg of the Mississippi River has remained in approximately mid-channel continuously since about 1909.



7. Island No. Ninety-Four (94) in the Mississippi River, consisting of one hundred seventeen and ninety-six hundreds (117.96) acres at the time of patent in 1888 has been eroded away by the natural processes of the Mississippi River and no longer exists at its location at the time of the federal patent.

8. The two accretionary features adjacent to the west bank of the Mississippi River at Lake Providence, Louisiana, are entirely different formations from the original Island No. Ninety-Four (94) and are located in a different geographic vicinity; have different histories of origin; are different in size and shape than [sic] the original island; and at all times since their formation in the 1930's, have been west of the boundary between the States of Louisiana and Mississippi.

9. No avulsion has occurred in the Lake Providence Reach of the Mississippi River since 1882 which would freeze the boundary between the States of Louisiana and Mississippi, as claimed by plaintiff. Neither the banks of the river nor the thalweg are involved in plaintiff's claim of avulsion.

10. The Lake Providence Port is partly or wholly situated on lands surveyed by U.S. Deputy Surveyors in the period of 1824-1829. A large portion of the sections involved, Sections 1 and 2 of T10N-R13E of the Louisiana Land District North of Red River were eroded away by action of the river and subsequently restored by accretion.

11. The ownership of the two accretionary features or islands adjacent to the west bank of the Mississippi River at Lake Providence, Louisiana, sometimes referred

to as "Stack Island(s)" belongs to the State of Louisiana and/or its residents, having been formed on the bed and banks of that portion of the Mississippi River lying in Louisiana.

12. The plaintiffs in this case, as successors in title to the original owners of Island No. Ninety-Four (94) have no claim of ownership to the two accretionary features or islands adjacent to the west bank of the Mississippi River at Lake Providence, Louisiana, sometimes referred to as "Stack Island(s)".

13. The legal boundary between the States of Louisiana and Mississippi is defined by the live thalweg, except in the vicinity of Island No. Ninety-Four (94) as it existed in 1888, where the legal boundary between the two states is defined by the dead or frozen thalweg immobilized in east channel Stack Island Chute by the avulsive diversion of the main channel by construction works of the Mississippi River Commission.

14. The principles of law applicable to river boundary cases between states mandates that the boundary be determined or defined by the "ordinary course of traffic on the river" or "track of navigation," not by the deepest or geologic thalweg.

15. Recent maps published by the U.S. Geological Survey and other agencies which purport to depict an "indefinite" or "undetermined" boundary at variance with the thalweg boundary - which must be determined by the main navigation channel (as depicted, for example, on the flood control and navigation charts) - possess no



authority for such departure from established principles of river boundary law.

Respectfully submitted,  
WILLIAM J. GUSTE, JR.  
Attorney General

BY: /s/ Gary L. Keyser  
GARY L. KEYSER  
Assistant Attorney General  
Post Office Box 94095  
Baton Rouge, LA 70804-0905  
(504) 342-7900  
Attorney for Intervenors

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**PLAINTIFF'S EXHIBIT 64**  
IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION

JULIA DONELSON HOUSTON, ET AL      PLAINTIFFS  
CIVIL ACTION  
NO. W86-0080(B)

VS.

RUTH M. THOMAS, ET AL      DEFENDANTS

CERTIFICATE OF CHANCERY CLERK OF  
ISSAQUENA COUNTY, MISSISSIPPI

The undersigned, Mary T. Vandevender, states under oath as follows:

I am the Chancery Clerk of Issaquena County, Mississippi which office I have held continuously since 1960 and hold at the present time. I have in my official custody all of the existing and available real estate assessment rolls through the year 1985 and tax receipts of Issaquena County through the year 1983.

I further certify that I have examined the available real estate assessment rolls of Issaquena County, Mississippi, with respect to all lands known as Island No. 94, also known as Stack Island, being also designated as Section 27, Township 11 North, Range 9 West, Issaquena County, Mississippi, and accretions thereto beginning with the year 1889 down to and including the year 1985, and such assessment rolls show that beginning with the year 1889 and each year thereafter down to and including the year 1985, all of such lands have been assessed to S. B.

Blackwell, also known as Stephen B. Blackwell, George T. Houston, et al, Houston Bros. Inc., George T. Houston and Ruth H. Houston, and George T. Houston, III and Ruth H. Jarvis Baker, and Ruth H. Jarvis Baker.

I further certify that the real estate assessment rolls of Issaquena County, Mississippi are unavailable for the years prior to 1889 and that the said rolls are unavailable for the years not shown on the attached Exhibit "A".

I further certify that during the years mentioned above, no other person or party has been assessed with any of the above described land other than the parties mentioned above.

I further certify that I have examined the available ad valorem tax receipts of Issaquena County, Mississippi, with respect to all lands known as Island No. 94, also known as Stack Island, being also designated as Section 27, Township 11 North, Range 9 West, Issaquena County, Mississippi, and accretions thereto beginning with the year 1916 down to and including the year 1983, and such tax receipts show that beginning with the year 1916 and each year thereafter down to and including the year 1983, all of such lands have been assessed to S. B. Blackwell, also known as Stephen B. Blackwell, George T. Houston, et al, Houston Bros. Inc., George T. Houston and Ruth H. Houston, George T. Houston, III and Ruth H. Jarvis Baker, and Ruth H. Jarvis Baker. It should also be noted that it appears that this property was sold to the State of Mississippi for nonpayment of ad valorem taxes for the years 1927, 1930 and 1932. Also, there are no tax receipts available in my office prior to the year 1916. Further, no

tax receipts could be found in my office for the years not shown on the attached Exhibit "B".

Attached to this Certificate are copies of the available assessment rolls and tax receipts. Some of the tax assessment rolls are not able to be copied. For those rolls Exhibit "A" reflects the information for each tax year, the acreage assessed, the total valuation and the page in the respective assessment roll where the entry may be found with regard to the said property.

/s/ Mary T. Vandevender  
MARY T. VANDEVENDER,  
CHANCERY CLERK  
ISSAQUENA COUNTY,  
MISSISSIPPI

STATE OF MISSISSIPPI  
COUNTY OF ISSAQUENA

SWORN TO and subscribed before, this 10 day of  
May, 1989.

/s/ JoAnn Heigle  
Notary Public  
My Commission  
Expires: Sept. 21, 1991

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Page numbers in brackets refer to pages in transcript.  
 DIRECT EXAMINATION OF EYREAL "JELLY" HIGGINS

\* \* \*

[p. 56] Q. (By Mr. Bailess) Jelly, could you describe for the Court how you knew what the people in Lake Providence felt about which state this property was in?

A. Well, all of them I talked to and all of them I know, it was considered to be Mississippi.

Q. Did you ever talk to the Louisiana game wardens?

A. Yes, I did.

Q. - Did they ever claim this to be Louisiana?

A. No, they didn't. I asked for some protection to try to keep people off and they said it was out of their jurisdiction.

\* \* \*

[p. 57] Q. Okay. Did any of those three Louisiana game wardens ever exercise any jurisdiction over Stack Island, to your knowledge?

A. Not to my knowledge.

Q. Did you request their help in policing Stack Island?

A. Yes, I did.

\* \* \*

[p. 65] Q. You mentioned a moment ago that the sheriff, Mr. Gilbert, knew that you had control of Stack Island. Did you ever request any help from him?

A. Yes, I did.

Q. Did you ever receive any help from him?

A. No, I didn't.

Q. What kind of help did you request from him?

A. You know, to try to keep people off and everything and he told me he had no jurisdiction over there.

\* \* \*

CROSS-EXAMINATION OF EYREAL "JELLY" HIGGINS

[p. 78] Q. The what? Oh, authorization. And I believe you said that Captain Jack Wyly had posted some of the lands himself.

A. Yeah, I think on that bank it was posted there.

[p. 79] Q. And you recall that Jimmy House also posted the land in front of his property out onto the island, don't you?

A. Jimmy who?

Q. House.

A. No, I don't recollect that.

Q. You don't remember seeing those posters?

A. Now, he could have but I didn't go down there so I wouldn't know.



Q. Did you know that the Louisiana legislature had transferred ownership of the island in the river to the Fifth Louisiana Levee District in 1908?

A. No, I didn't.

Q. Nobody ever told you that?

A. Nobody ever told me that.

Q. You never knew about the court case about that?

A. No.

Q. Now, I believe you said that the Louisiana game wardens would honor a Mississippi deer tag?

A. Yes.

Q. So, if you brought a deer off that island and you had a Louisiana license and a Mississippi deer tag you would be okay?

A. Yes.

[p. 80] Q. So actually they were watching hunting on the island, weren't they?

A. Pardon?

Q. The Louisiana game wardens were paying attention to hunting on the island, weren't they?

A. Yes, they just wanted to make sure it came out of Mississippi and not in Louisiana.

Q. Or that it had a Mississippi tag?

A. Yeah.

Q. Okay. You could also hunt deer and use a Louisiana tag out there, couldn't you, during the Louisiana deer season?

A. Yeah, if the Louisiana - if the Mississippi season was open. But you had to have a Mississippi tag, deer tag, over here. You couldn't just go over there and hunt with a Louisiana license because you had to have the Mississippi tag.

\* \* \*

[p. 81] THE COURT: What about on Stack Island?

THE WITNESS: But not - Mississippi season would have to be open to hunt on Stack Island with a Louisiana license.

THE COURT: Could you ever hunt on Stack Island without the necessity of a Mississippi deer tag?

THE WITNESS: No, sir. Because there's a bunch of them got picked up over there and they took them to Mayersville, Mississippi.

\* \* \*

#### DIRECT EXAMINATION OF CHARLES P. SHELTON

[p. 96] Q. Did you have occasion during that time to talk with other people in the Lake Providence area to [p. 97] determine whether or not they had formed any opinion about whether this was - whether Stack Island was Mississippi or Louisiana?

A. No. \* \* \* In other words, everybody considered it as Mississippi as far as I knew at that time, you know.

Q. You mentioned that you went to Mississippi looking for help. Who did you go see?

A. We went to Mayersville. The sheriff of East Carroll Parish went with us.

Q. Who was the sheriff at that time?

A. Sam House. Me, James Kelly, and Sam House, we all - he drove us over in his car to Mayersville to try to get help over that way because he said he [p. 98] had no authority on that island but he was nice enough to go with us to see if we could get help on the Mississippi side.

\* \* \*

#### CROSS-EXAMINATION OF CHARLES P. SHELTON

[p. 104] Q. You did say that you had a build a fence around the property that Sheriff Sam House claimed?

A. Yes, sir.

Q. So, he was on the Louisiana side but claimed out through the chute?

A. Yes, sir.

Q. Onto the island?

A. Onto the island.

[p. 105] Q. So, you had to make a fence around his claim?

A. Yes, sir.

\* \* \*

#### DIRECT EXAMINATION OF JAMES B. KELLY

[p. 136] Q. Did you ever request the Louisiana game wardens, Game and Fish Commission, or whatever the proper name for it is in Louisiana, did you ever request that any game warden help you patrol the island or help you prosecute people and keep down trouble?

A. Yes, sir. I asked them several years but they told me, the captain did, that he couldn't allow his men to come on Stack Island because as far as he knows he's got orders from Baton Rouge that that was in Mississippi, to keep all the wardens away from Stack Island.

\* \* \*

#### CROSS-EXAMINATION OF JAMES B. KELLY

[p. 145] Q. But the Wildlife people from both states really didn't seem to know the extent of their jurisdiction over the island; isn't that true?

A. Louisiana didn't, but Mississippi did.

\* \* \*

#### DIRECT EXAMINATION OF BILL MARSHALL

[Witness was agent, Mississippi Bureau of Narcotics]

[p. 226] Q. Are you familiar or had any dealings with Stack Island, that formation of land called Stack Island?

A. Yes, I am.

Q. And how did you become familiar with that, Bill?

A. We found a large patch of marijuana growing there in 1981 and subsequently arrested some people there.

Q. Okay. How did you become familiar with Stack Island?

A. Our office had received a call from the Louisiana State police that while they were doing aerial surveillance along the Mississippi River that they found a patch of marijuana growing and through their research they found out that this island was, in fact, in Mississippi and they had called and requested -

\* \* \*

#### CROSS-EXAMINATION OF BILL MARSHALL

[p. 230] Q. As I understand your testimony, the Mississippi people had found the marijuana field?

A. Originally the Louisiana State Police had found it.

Q. Okay. And that was Trooper John Payne who made the call to whom?

A. Auger. His last name is Auger. I don't remember his first name. I just know he was the supervising sergeant. I think they were both out of Monroe, maybe.

Q. And, so, the arrest was actually a joint operation at the time they actually took the subjects into custody?

A. Yes, sir. They had taken them into custody. At the time they were arrested they were just - we were in the process of obtaining a search warrant and they had gone to the area of Stack Island to secure the area until the search warrant was obtained. And while - when they got there they found these people there and they saw them, so they had to arrest them at that time or detain them or whatever they did.

\* \* \*

#### DIRECT EXAMINATION OF RALPH POLK

[p. 242] Q. In the period that you were on the island or hunting on the island, did the Louisiana game wardens ever come on Stack Island?

A. No.

\* \* \*

[p. 243] Q. Ralph, during that time that you lived in Lake Providence, do you know whether there was a general reputation in the Lake Providence community concerning whether or not Stack Island was Mississippi or Louisiana?

A. Everybody there believed it was Mississippi. The sheriff's department, everybody, the game warden, even the landowners along there thought it was Mississippi. We thought it was Mississippi. We didn't know.

\* \* \*



## CROSS-EXAMINATION OF RALPH POLK

[p. 252] Q. I can understand that. I understand that. And I believe you said that you didn't know whether Stack Island was in Louisiana or Mississippi. You thought it might be in Mississippi, but you didn't know.

A. I was born and raised there. [Polk's age is 42] And the whole time I lived there, everybody said it was Mississippi and I grew up thinking it was in Mississippi.

Q. But you knew there was uncertainty about that, didn't you?

A. No, there wasn't any doubt. I mean, that's - I thought Stack Island was Mississippi, just like East Carroll Parish was Louisiana.

Q. Did you ever make any inquiry into that?

A. No.

Q. Never talked to anybody, did you?

[p. 253] A. Well, I believe we asked the sheriff one time - we had some goats over there and we asked the sheriff over there - dogs was killing the goats over there, and I think we asked for some help from the sheriff about the dogs. And I don't believe they could - if I remember right, I don't believe they could do anything.

Q. How could you get onto the island at that time?

A. On horses.

Q. Did the sheriff have any horses?

A. No, I don't guess. I don't know.

\* \* \*

[p. 255] A. I don't believe we even went to the sheriff's office. I think we talked to a [East Carroll Parish] deputy sheriff which was Claire Warner at the time. [around 1959] Mr. Claire Warner, I believe to the best of my recollection he said that there wasn't anything he could do about it because it was over on the island and that was Mississippi.

\* \* \*

## VOIR DIRE EXAMINATION OF AUSTIN SMITH

[p. 270] Q. Is that your most recent case before the Supreme Court?

A. No, sir.

[p. 271] Q. Is there any reason that you didn't attach the most recent cases that you've had with the Supreme Court?

THE COURT: Mr. Keyser, you are wasting my time.

\* \* \*

[p. 273] Q. (By Mr. Keyser) Mr. Smith, do you have a agree [sic] in potamology?

A. I have a working degree in potamology.

Q. Do you have a degree from any university?

A. No. I consider myself one of the foremost potamologists in the country.

Q. Do you know anyone else that so considers you?

A. Well, if you read that learned judge's description, you will find out there are other people who think the same thing.

Q. Is it true that you've never written an article on potamology?

A. Well, I've written articles around it.

Q. But not actually on the subject itself?

A. No.

\* \* \*

#### DIRECT EXAMINATION OF AUSTIN SMITH

[p. 284] Q. Mr. Smith, from your study of Stack Island, are you able to determine which state Stack Island is located?

A. Well, I found it to be located in Mississippi by the matter of the 1981 land survey.

Q. You said 1981.

A. 1881 land survey.

\* \* \*

[p. 285] But I'd like for you to refer to P-1 and ask you to say whether or not Stack Island is shown on P-1. And what is P-1?

A. That is the township plat of Township 11, Range 9 West of the Choctaw District in Mississippi.

Q. What county in Mississippi?

A. That would be Issaquena County.

Q. Okay. And that map was prepared when, Mr. Smith?

A. It was in the 18 - I believe it was 1820. I'm not sure.

THE COURT: 18 what?

THE WITNESS: 1826 is the date, I believe, on here, sir.

Q. (By Mr. Bailess) Okay. And on that map, Mr. Smith, is Stack Island shown?

A. It's sketched in there, sir, on that map.

\* \* \*

[p. 286] Q. (By Mr. Bailess) Mr. Smith, with Exhibit P-2, how do Exhibit P-1 and P-2 fit together? East and west?

A. They are on the opposite side of the river.

Q. Okay.

A. One Mississippi and one Louisiana.

Q. Is Stack Island shown on Exhibit P-2?

A. No, sir.

\* \* \*

[p. 291] Q. And the second page of that exhibit (exhibit P-3 prepared in 1867) is a, appears to be a survey. Would you describe what it shows.

A. This survey shows the location of the locus of Stack Island in 1867. And it was consolidated by a sand-bar on the Mississippi shore at the time of this '78 [sic] survey.

\* \* \*

[p. 293] Q. (By Mr. Bailless) Mr. Smith, the next exhibit is P-4. What is it?

A. This is a 1874 reconnaissance survey map.

THE COURT: What kind of survey map?

THE WITNESS: Reconnaissance survey map of the Mississippi River.

\* \* \*

Q. Is Stack Island shown on this exhibit?

A. Yes, sir.

Q. And how is it shown?

A. It's shown as an island.

\* \* \*

[p. 294] (Testimony refers to Exhibit P-4)

Q. Also there is words written in red, looks like "Mississippi-Louisiana boundary channel"?

A. Yes, sir.

Q. And a red dotted line on this exhibit. What is that?

A. I followed Suter's dotted line indicating the thalweg of the river. Put a red mark on it.

Q. So, there was a thalweg line placed on this map by Mr. Suter in 1874?

A. Yes.

\* \* \*

(Testimony refers to Exhibit P-4)

Q. At the time of this survey in 1874, Mr. Smith, where was the boundary thalweg of the Mississippi River at Stack Island?

A. It was on the left side.

Q. Which would place Stack Island in which [p. 295] state, Mississippi or Louisiana?

A. Mississippi.

\* \* \*

(Testimony refers to Exhibit P-5)

Q. All right. Would you indicate to the Court the - where the thalweg was, the boundary thalweg between Mississippi and Louisiana at that time in 1879.

[p. 296] A. I placed the boundary thalweg as I thought it would be on here in red color. I marked it "Thalweg Navigation Channel Carries the Interstate Boundary."

Q. And is that west or east of Stack Island or Island No. 94?

A. That's west of Stack Island. I've got Mississippi and Louisiana marked in red on that line.



\* \* \*

[p. 299] Q. (By Mr. Bailess) Mr. Smith, are these [exhibits P-1 through P-5] some of the exhibits that you reviewed in formulating your opinion concerning the bounds of Stack Island?

A. Yes, sir.

\* \* \*

[p. 300] Q. In Exhibit P-6 can you tell how the deputy surveyor tied Island No. 94 in to Mississippi through his survey?

A. Yes, sir. He tied it to Township 11, Range 9 North by the line running between Lots 5 and 6 of Section 3. And he tied the west end of that line to Island 94 or Stack Island.

Q. Is Island 94 and Stack Island one and the same?

A. Yes, sir.

\* \* \*

[p. 301] Q. (By Mr. Bailess) Mr. Smith, do those surveyor's notes mention the size of any trees [Reference is to Exhibit P-6] on Island No. 94, Stack Island?

A. Yes, sir, they do. When he was meandering the island, he saw those trees. He marked the trees at certain corners. He notes that they are of certain size.

Q. I want to refer you to page 3 of those notes, Mr. Smith, down towards the bottom. Does it mention the size of the tree in that?

A. Yes, sir. It mentions the 40-inch diameter [p. 302] tree.

Q. A tree that is 40 inches in diameter?

A. Yes, sir.

Q. Is that on Stack Island or Island No. 94?

A. Yes, sir.

Q. If you will turn the page up at the top, I believe there's another tree mentioned on the first line of that description. Does it mention a 26-inch diameter hackberry tree?

A. Yes, sir.

Q. I think another tree is mentioned in the next paragraph as being some 30 inches in diameter; is that correct?

A. Yes, sir.

\* \* \*

[p. 303] Q. (By Mr. Bailess) Mr. Smith, I'm going to refer you to what's been marked P-7. Is that a surveyor plat that was made by the deputy surveyor whose field notes we just reviewed?

A. Yes, sir. It's a plat of Island 94, Township 11, Range 9 West. Dated October 4, 1881.

Q. On that plat, are you able to determine which state that property is located, Island No. 94 or Stack Island?

A. It's in Mississippi.

Q. Tell me how you know that, Mr. Smith.

A. Well, it was titled Mississippi land that they surveyed in Mississippi. There was an island in this.

Q. Okay. Can you tell by looking at Exhibit P-7 where the boundary thalweg channel is located?

A. It's on the left side of Stack Island.

Q. And how can you tell that by looking at that exhibit?

[p. 304] A. Well, it says "good deep channel, no bottom." Now, that mark is at the head.

THE COURT: It's a mark what?

THE WITNESS: It's marked "good deep channel, no bottom."

\* \* \*

Q. Mr. Smith, are you familiar with what the term "no bottom" means, or what it meant in 1881?

A. Yes, sir.

Q. What does it mean?

A. It means that it was over 24 feet deep at the time the man made the survey.

\* \* \*

Q. There is also some words printed on this plat. I'm trying to - it looks like "heavy caving of bank" written right up under where it said "good deep [p. 305] channel."

A. Yes, sir.

Q. What does that tell you, Mr. Smith?

A. There's a current there. There's a strong current there.

Q. Mr. Smith, over on the east side of Island No. 94 as shown on this Exhibit P-7, I see the words "east chute of Mississippi River."

A. Yes, sir.

Q. What does that mean to you?

A. Well, it means that's the chute of Stack Island.

Q. A lesser channel of the Mississippi River?

A. Much lesser.

Q. Okay. I see at the head of the island, still in the chute, what's been labeled "east chute of Mississippi River," the words "depth 12 foot." What does that tell you, Mr. Smith, about that east chute channel?

A. Well, it wasn't too much water at the head at that time.

Q. I see down on the south end of the survey plat the word "shoals," s-h-o-a-l-s? What does that mean, Mr. Smith?

A. That means shallow water.

\* \* \*

[p. 308] Q. (Testimony refers to Exhibit P-8) What does Marshall's shoreline survey of October and November, 1881, show with regard to the boundary thalweg of the Mississippi River, Mr. Smith?

A. Using the Government lights which were established at that time on the right descending bank and the left descending bank, the thalweg would be on the west side of Stack Island.

[p. 314] Q. Mr. Smith, have you examined the soundings on this 1882 hydrographic map in the bed of the river to determine where the boundary thalweg is located on this Exhibit P-13?

A. Yes, sir.

Q. And how have you so indicated that on this map?

[p. 315] A. I have indicated it by a dashed, dotted red line.

Q. And is it west or east of Stack Island?

A. It's west of Stack Island. I've labeled that "Mississippi-Louisiana."

[p. 322] Q. Mr. Smith, with regard to your study that you made at my request, are you able to determine whether or not Stack Island has ever disappeared?

A. I found that it was land in place in 1881 and remained land in place until today.

[p. 324] Q. Describe briefly what happened to it from that time through the next, let's say through 1894.

A. Well, the lower end of Stack Island was avulsed across during the flood of 1883, '84.

Q. Is that shown on Exhibit P-14?

A. Yes, sir. That's the 19 - the 1884 hydrographic survey that has spot soundings. But that shows Stack

Island has been avulsed across by the river. And the remnant of the Stack Island is shown downstream at a considerable distance from it.

[p. 330] Q. Mr. Smith, by looking at this exhibit, which I believe is P-17, and noting the lights as you have, where would you say at that time the navigation channel was?

A. It was on the west side of Stack Island.

Q. Where would you say the thalweg was?

A. On the west side of Stack Island. I'm talking about the boundary thalweg.

[p. 334] Q. (By Mr. Bailess) Mr. Smith, in or about the year 1913 when the Stack Island east chute channel was adopted for navigation, what happened to Stack Island?

A. Well, it was in a position to -

Q. You need to speak into the microphone, please, sir.

A. Well, the flow was pretty well divided at that particular time on the east side and on the west side. So, conditions were favorable for the island to go downstream.

Q. Mr. Smith, in or about this year when the east chute channel was adopted for navigation, did the navigation channel creep over Stack Island?



A. No, sir. The major flood of 1912 and 1913 apparently enlarged the chute channel and this was adopted by navigation. That adoption is avulsive in nature and it leaves the Mississippi-Louisiana thalweg boundary on the west channel.

Q. Did the navigation channel which heretofore you testified has been located west of Stack Island, did it jump over Stack Island?

\* \* \*

[p. 338] Q. Okay. Now, my question is did the boundary thalweg channel that was located on the west side of Stack Island jump over Stack Island, did it run around Stack Island, or just what did it do?

A. Well, I'm not a "jump over" witness. The thalweg, boundary thalweg stayed on the west side of Stack Island. The floods of 1912 and 1913 enlarged the chute channel to the east of Stack Island. And it was of an avulsive nature, that enlargement was. And it was adopted by navigation. And the boundary thalweg remained on the west side of Stack Island under those conditions. This has happened in other places.

Q. Repeat that, Mr. Smith, please.

A. Such action of enlarging the chute channel, [p. 339] of an island is called avulsing, leaving the boundary channel on the other side of the island unaffected.

Q. Mr. Smith, since 1913 in your study of this property, this island, has Stack Island ever disappeared or eroded away since that time?

A. No, sir, it has not. You had me make a study of the location of Stack Island. And that study clearly showed that Stack Island was land in place in 1881 and remained in place throughout the entire period and is still there today.

\* \* \*

[p. 340] Q. What happened to the abandoned navigation channel west of Stack Island after 1913?

A. Well, it gradually attenuated and lessened and in 1955 or thereabouts, ceased to flow.

Q. What is the significance of the channel ceasing to flow in or about 1955, Mr. Smith?

A. Then that would fix the locus of the thalweg of the boundary.

Q. The boundary between what?

A. Between Mississippi, and Arkansas - I mean and Louisiana.

\* \* \*

[p. 401] MR. BAILESS: Your Honor, at this time we would offer Exhibit P-32 and P-32-D.

THE COURT: Are you going to ask him what those numbers represent?

MR. BAILESS: I will, Your Honor. I planned to do it in a different way.

Q. (By Mr. Bailess) But what do those numbers represent, Mr. Smith?

A. Those are the geographic locations of the boundary and they are tied to the north latitude and the west longitude lines on the map.

Q. Mr. Smith, what boundary does that represent?

A. It represents the boundary between Louisiana and Mississippi.

THE COURT: P-32-D and P-32 will be received into evidence.

(Exhibits P-32-D and P-32 offered and received into evidence.)

Q. (By Mr. Bailess) Mr. Smith, I'm going to hand you a portion of the complaint filed in this case which is numbered 52. The Paragraph 52 in that complaint is found on page 12 and 13 of the complaint [p. 402] and is a document that is attached to the complaint as Exhibit A. Is Exhibit A as is shown here a copy of what has been admitted into evidence as 32-D, just reduced in size?

A. Yes, sir.

Q. And does the description contained in Paragraph 52 of the complaint conform and accurately describe the boundary between Mississippi and Louisiana?

A. Yes, sir.

#### CROSS-EXAMINATION OF AUSTIN SMITH

[p. 409] Q. (By Mr. Keyser) Mr. Smith, this sketch that you've drawn in orange pencil on P-2 is your [p. 410]

representation of Stack Island as of this date against the west bank of the river, is it not?

A. Well, it's the approximate north and south limits. It doesn't include the erosion into the original sections along the west bank.

Q. So, as I understand your testimony, the island as it's presently located includes some of the original sections in this original township plat?

A. I'm sure that it was erosion into the - because the levee had to be set back numerous times. So, it was erosion.

Q. Thank you. Mr. Smith, did you make any effort to locate on P-2 or any other exhibit the island by latitude and longitude or just the boundaries you refer to in your testimony?

A. I don't understand your question.

Q. If I understand your testimony, you have located the boundary by latitude and longitude on the various exhibits that Mr. Bailess showed you; is that correct? Or by geographicals, as the judge said?

A. I located that on the 1975 hydrographic survey.

Q. By latitude and longitude?

A. Yes, sir.

Q. Did you make any effort to do the same thing [p. 411] with the island itself?

A. No, sir.

Q. Did you do that with the original Stack Island that was patented out in 1888?

A. No, sir, I didn't. The map -

Q. Now, as I -

MR. BAILESS: Your Honor, the witness should be allowed to respond. He was trying to speak.

THE COURT: Let the witness finish his answer, if you would, please.

A. The 1881 land survey shows the limits of the island as meandering.

Q. (By Mr. Keyser) Let me find it, Mr. Smith. I show you Plaintiffs' Exhibit 1 and ask if that's what you have reference to.

A. No, sir, I have reference to the land survey of 1881.

Q. I see. Locating Stack Island?

A. Locating the Stack Island with reference to Township 11, Range 9 West in Issaquena County.

Q. And I believe that survey located it just as you said on this township plat in Township 11, Range 9 West in the Choctaw District, does it not?

A. Yes, sir. It was located opposite Section 3 of Township 11, Range 9 West.

[p. 412] Q. Okay. As I understand what you're saying, it is depicted on P-1 and it is opposite these sections 1, 2, and 3 in the Choctaw District, is it not?

A. Yes.

Q. Okay. Now, in P-2, being a Red River District, or a district north of the Red River, it's now located, according to your sketch, in Township 21, Range 13 East of another land district, is it not?

A. It isn't in that land district. It's in - it remains in the Mississippi district.

Q. You've drawn it in the Louisiana district, though.

\* \* \*

[p. 413] Q. I believe you said with respect to P-18 which I placed on the board there in front of you, that the floods of 1912 and 1913 worked some major changes on the downstream course of navigation.

A. I said they had enlarged the chute channel during the major floods of 1912 and '13 and that [p. 414] navigation adopted the chute channel at the time of the 1913 hydrographic survey.

Q. Would you agree that the ordinary course of track of navigation as of 1912, 1913 was actually in the east channel, chute channel prior to the floods?

A. I have no record, nothing to substantiate the exact date that I know that in 1908 it was on, the navigation was on the west side of Stack Island.

\* \* \*

Q. Mr. Smith, I've given you Louisiana Exhibit 16, a U. S. geological survey of the river in 1909 and I've given the Judge a copy of 16-A, being essentially the same map. Does that map depict the Louisiana-Mississippi boundary from the east chute channel?



[p. 415] A. Well, I don't know. The map - this says the State of Louisiana. It doesn't say anything about the - it just barely advises that the U. S. Geological Survey had George Smith direct it. But this map must have been made by the State of Louisiana. And -

Q. Mr. Smith, do you refute that that map was made by the Geological Survey?

A. I don't think it was made by the Geological Survey.

Q. I showed you that map some weeks ago and you've had some weeks to examine it, have you not?

A. Well, it states over here in the notes that the shoreline in the river are surveyed by state engineers, topography between levee and river surveyed by Mississippi River Commission. I think this is something the State of Louisiana might have cooked up.

\* \* \*

Q. Well, Mr. Smith, do you see anything inaccurate about that map that you'd care to tell us about in court today? Anything about the area, measurement, size, location, anything that's at issue [p. 416] here that you would disagree with?

A. Well, I would disagree that there's a line on here which purports to be the Louisiana-Mississippi boundary. That's entirely erroneous.

\* \* \*

Q. I see. Now, I believe you'll also agree with me that the map shows the radiating sections from the Louisiana side towards Stack Island?

A. Yes, sir, I see the sections.

[p. 417] Q. And even at that time those section lines almost touch the island, don't they?

A. Well, I don't know what the - they left the radiating sections and never attempted to show what happened to them.

\* \* \*

Q. When the Mississippi River Commission was formed in 1879, which two projects along the Mississippi River did it select as its first projects?

A. Well, they selected the Lake Providence reach as one. And the other was the Plum Point reach, I believe.

Q. Correct. Those were the first two major projects. Lake Providence, I think you will agree the main problem was that there were unstable bank [p. 418] conditions and as of 1879, 1880, 1881, and 1882, the main channel of the river was actually flowing east of the island. Don't you agree with that?

A. No, sir.

Q. Do you agree that the Mississippi River Commission shows as its Lake Providence project the establishment of a system of dikes north of Stack Island?

A. I remember seeing the map that showed the locus of the dikes.

Q. Do you remember that at that time the main steamboat channel went between Stack Island and Mississippi on the east of the island?

A. No, sir.

Q. You don't remember that?

A. No, sir.

Q. Do you remember that bank caving conditions along the Mississippi shore caused the Mississippi River Commission to use as its first project in this reach of the river the dike construction that I asked you about earlier?

A. I don't remember that.

Q. Do you remember that the dike construction was intended to move the river from the east chute channel to the west channel in 1880, 1879?

[p. 419] A. Well, they built a dike system all along the east side there above Stack Island and that closed off the flow in the chute channel and by 1894 there was practically no chute channel there that had been filled up. The 1894 map shows very little flow in the chute channel and all of the buoys on the west side of Stack Island flow.

Q. So, you do recall that the dike system that was established was to divert the river from the east chute channel to the west channel; is that right?

A. It wasn't to divert the flow from the west - the east chute channel. It was to put all the flow along an alignment they had selected.

Q. Well, that selection was the west channel, was it not?

A. Well, it was west of Stack Island.

Q. So, prior to the establishment of the dike system, the east channel chute was the main navigation channel, wasn't it?

A. Which was?

Q. The east.

A. No, sir.

\* \* \*

[p. 461] Q. Mr. Smith, during your testimony you said that Island No. 94 and Stack Island were one and the same; is that correct?

A. Yes, sir.

Q. Where is Island No. 94 today?

A. Well, it's over on the right bank of the Mississippi River along the front of Lake Providence.

\* \* \*

[p. 462] Q. Mr. Smith, I show you a feature outlined in black on this 1988 Geological Survey map. And I tell you that is the precise geographic location of Stack Island in 1881. Taking that for granted, is that -

A. I didn't check it.

[p. 463] Q. Just if you'll assume that just for the purpose of this next question. If you will assume that this is the position of Stack Island in 1881, is it in the same geographic position as the Stack Island you contend is the Stack Island on the west bank?

A. No, sir.

Q. Thank you.

\* \* \*

## DIRECT EXAMINATION OF JIMMY R. HOUSE

[p. 537] Q. (By Mr. Keyser) Is the House property above or below the Lake Providence Port Commission facility?

A. It's above, north.

Q. Has the accretion that's attached to your family's property sometimes been referred to as Stack Island?

A. It's been referred to as Stack Island Hunting Club. That's where the name Stack Island came from.

\* \* \*

[p. 538] Q. Thank you. How have you known the accretion in front of your family property to be called?

[p. 539] A. Well, years ago we called it Stack Island Hunting Club and then about ten years ago we formed our own hunting club and we called it Triage Hunting Club because that's what we called the property across there.

Q. I believe you said it had not been known simply as Stack Island.

A. I've always called it Stack Island Hunting Club because I always understood that another island north-east of this property to be called Stack Island.

\* \* \*

[p. 540] Q. Okay. If you'll take the stand, please. You have drawn parallel lines extending from west to east describing the tract of land which is rectangular in shape and extends to the water's edge; is that correct?

A. That's correct.

Q. Now, have you used this land as the family land during your lifetime?

A. I have.

Q. Has anyone ever said that it was their land or made a claim against your family?

A. Not until this time.

\* \* \*

[p. 548] THE COURT: Mr. House, have you testified that you've hunted that whole area or just the part that you mark is claimed owned by the House family?

THE WITNESS: Well, I have hunted probably all of it at one time or another with other people that had other claims to the property. We know everybody over there that owned the property north and south of there so we have hunted together. But mostly my hunting has been done on that property right there and the Wyly estate property because I have some friends that are in with the Wyly family and we've hunted back and forth on their property and mine. And [p. 549] 99 percent of the hunting I have done has been on those two pieces of property.

\* \* \*

## DIRECT EXAMINATION OF ERNEST S. EASTERLY

[p. 633] Q. (By Mr. Keyser) In the course of your study of this reach of the river, did you also consider Louisiana Exhibit 18-A.



A. Yes, sir, I did. That is the 1883 report of [p. 634] the Mississippi River Commission.

Q. Could you tell the Court what significance that was in your study.

A. Well, of course, by this time the Stack Island, Island 94, has become located near the Mississippi bank and according to the report and information, it's fairly clear that a series of dikes were going to be constructed in order to deflect the main channel of the river to the right of Stack Island. Of course, that's to the right descending because by this time the main channel of the river had begun to be diverted through the Stack Island chute and there is language in the report to that effect and the map attached to the report shows the old steamboat channel. And, of course, that was a line that was becoming increasingly evolved by traffic. If you look in the report on page 434 - and may I quote?

Q. Yes.

A. Where it says "fourth" and I suppose this is one, two, three, four - the fifth paragraph. It says "Fourth - The closing of the main channel of the river, which passed between the foot of Baleshed Bar and the head of Stack Island, and bringing it back to the right of Stack Island by a system of deflecting dikes located on the Louisiana side at Elton Bar . . . "

[p. 634] It later goes on on page 425 to talk about - and again this is under "Stack Island." "In order to force the main channel of the river, which flowed down the Stack Island chute, on the outside and along the face of the island between it and Elton Bar, a main dike consisting of

two rows of piles was driven . . . " And, of course, this would have the effect of throwing that channel back over to the right of Stack Island. And that was the purpose of these constructions.

\* \* \*

[p. 637] Q. Okay. When was the course or track of navigation in the east chute channel?

A. It would have been in 1881 and in times prior.

\* \* \*

[p. 653] Q. Dr. Easterly, I show you Louisiana Exhibits 77, 78, 79 - pardon me - 76, 77, 78, and 79, and ask if you can identify these.

A. Yes. These are exhibits from the records of the State Mineral Board for the State of Louisiana. State's Exhibit No. 76 is the August 13, 1980, Lease Sale. Actually it's an advertisement for the lease sale, certain tracts, a Tract No. 16885, which, of course, embraces much of the subject area and, of course, this lease sale that was culminated in a lease, I believe the lease is Lease No. 77.

Q. Exhibit No. 77?

A. Yes, it is.

Q. And what is the state lease number?

A. The state lease number is 8884 for the contract here. The tract is listed as 16885. Advertisement: But both of the leases comprise lands now or formerly constituting beds and bottoms of all water bodies within a given section - within a given area, rather. And this, of course, area covers part of the subject area of dispute.

[p. 654] Q. Do you have LA-78 there?

A. 78 is another advertisement for lease sale and this resulted in the mineral lease 8885. This was also for lands now or formerly constituting the beds and bottoms of all water bodies within a given area and covering much of the same area. Actually this lease was a little below the previous lease with the same general vicinity. This particular lease was also granted August, 1980.

[p. 655] A. 16886.

Q. Again, another oil, gas and mineral lease?

A. Another oil, gas, and mineral lease.

Q. By the Louisiana State Mineral Board?

A. That is correct.

#### CROSS-EXAMINATION OF ERNEST S. EASTERLY

[p. 655] Q. (By Mr. Bailess) Those leases only convey whatever interest the State of Louisiana has in the captioned lands; isn't that correct?

A. That is correct. Without warranty and recourse.

Q. And I think it also provides that if - both of those leases provide that if payments are made to the state, State of Louisiana, and it's later determined that it wasn't Louisiana's land to lease that Louisiana doesn't have to pay it back though; is that what that lease says?

[p. 656] A. That's standard policy for all mineral leases for land owned by the State of Louisiana.

Q. The block of description in that land obviously goes into the state of Mississippi, does it not?

A. The description covers a broad tract of the river that does include part of Mississippi.

Q. Far on the east bank of the Mississippi?

A. According to the plat it's clearly identified as such, yes, sir.

#### DIRECT EXAMINATION OF HATLEY HARRISON

[p. 717] Q. (By Mr. Keyser) Mr. Harrison, from reading [p. 718] all of the Mississippi River Commission reports regarding the dike construction at Stack Island that we've just discussed in Louisiana 18-A, is there any doubt in your mind that the main channel of the river was in the east chute channel east of Stack Island prior to the commencement of the dike project?

A. No, there's no doubt in my mind that the main channel was in Stack Island chute which separated Stack Island from the Mississippi shore. There's no doubt in my mind at all.

Q. And the dike project caused the channel to be shifted west?

A. That's right.

Q. And was that a sudden change?

A. Sir?

Q. Was it a sudden change?

A. The change was sudden. Once that last piling was driven into the dike across there, it was no more navigation at the thalweg – or the navigation channel had been shifted suddenly and perceptibly to the other side.

Q. Thank you.

\* \* \*

[p. 732] A. Every document that I have analyzed in this case subsequent to 1909 has always shown the navigation line which I considered a boundary between the two states as being east of Stack Island and has always been there. There is an island south of Stack Island which is quite large as appears to be a bit of erosion at the peninsula at the southern end of Stack Island up against the Louisiana shore. I see no erosion that I know, no accretion below that point.

\* \* \*

[p. 827] MR. KEYSER: Your Honor, in lieu of calling Mrs. Theresa Deano on land title and abstract and introducing this whole box of documents back here, our stipulation would be that we would use a Tobin map which shows the Louisiana side of the river at Lake Providence and below. And the stipulation would be that riparian sections as depicted on that Tobin have at all times been owned by Louisiana residents who have paid taxes on those sections of land as they have eroded and accreted and those sections are located in Township 21 North, Range 13 East just below the town of Lake Providence and in Township 20 North, Range 13 East just

below that. And that the Houstons have [p. 828] never been owners of record of any of those sections nor have they paid taxes on any of the land in those sections.

And with that stipulation, Your Honor, and as a part of it we offer –

MR. BAILESS: Your Honor –

MR. KEYSER: – the Tobin map marked as LA-37 in lieu of Louisiana Exhibits 38 through 50 and we would also offer LA-51 which has already been offered by the Plaintiffs and we would like to offer it simply by attaching our LA-51 label to theirs so as not to add more documents to the record.

MR. BAILESS: I'm confused, Your Honor.

THE COURT: Let's take the stipulation first. Let's do it one at a time.

Mr. Keyser, it's my understanding that – what is the exhibit number to be given Tobin?

MR. KEYSER: 37

THE COURT: It's my understanding that the stipulation is that the Tobin map LA-73 will be received into evidence, that that map depicts the ownership lines and section lines that basically run out into the contested river area. That it is stipulated that those areas or that record title to those areas has always been held by Louisiana [p. 829] residents who have paid Louisiana taxes on those areas and that those areas have not been owned either by – have not been owned by record title in the Houston Plaintiffs nor have the Houston Plaintiffs ever paid any Louisiana taxes on those lands.



Now, I assume that it is understood from that stipulation that that stipulation would not be meant to indicate in any way that any erosion of those lands and islands growing off of the eroded bank is intended to have the legal effect of binding the Plaintiffs that way. I assume that this proof is limited, just as the stipulation is limited and the stipulation is limited to showing that Louisiana residents owned contiguous lands to the Louisiana bank and that we still have ownership in contest, these accretions that are at contest in the lawsuit.

MR. KEYSER: Yes, sir.

THE COURT: Can you accept that stipulation?

MR. BAILESS: Yes, Your Honor. We need to clear it up some. First of all, this LA-37 we have not seen before they put it up on the board the other day. And I'm not going to make the objection that they never tendered as the exhibit. And I don't have a problem with the exhibit, and will stipulate that this Tobin which I think we need to get the date off [p. 830] of, is in the late Forties and earlier. I don't know. Just whatever it is. If you'll go get it, Gary, we'll get to that in a minute. But it shows a water line at that time but it also shows a boundary line which we don't agree with on all respects and it also shows, as Louisiana has contended throughout, radiating sections from Louisiana which we don't feel have any effect on what land formations were formed east of the boundary thalweg and in that same place.

THE COURT: Can you reach a stipulation? I'm not going to spend another half hour here listening to the lawyers trying to make a stipulation. Either make a stipulation or call the witness. I'm beginning to -

MR. KEYSER: Judge, as Mr. Bailess stated, the Tobin map is of whatever date it is and it's not intended to suggest that we would lie or try and breach those boundary lines.

THE COURT: Rather than discuss all this with me, make your stipulation if you can make one. If you can't, call the witness. If you need to call the witness, call the witness. Let's get this thing closed up.

(Off the record.)

MR. BAILESS: It would be limited to the [p. 831] mainland of Louisiana as shown on this map, Your Honor, and I think for the record's sake we might draw a red line down the mainland shown on this map. Is that okay with you, Gary? Just the line?

MR. KEYSER: Well -

MR. BAILESS: Is that the water's edge? No, that's the meander line of 1823.

MR. KEYSER: That's agreeable, Judge. It's meant just as a general proposition as you stated it yourself and that really encompasses the stipulation I intended.

MR. BAILESS: Your Honor, just for the record, I'm going to draw a red line along the water's edge just so there won't be any question about what -

MR. KEYSER: That appears to be a meander line or some water line as of the time the Tobin was made, Judge.

THE COURT: Is the stipulation satisfactory with the Plaintiffs now, Mr. Bailess?

MR. BAILESS: Yes, Your Honor.

THE COURT: All right. Is the stipulation satisfactory with the State of Louisiana and the Louisiana Port Commission?

MR. KEYSER: Yes, sir.

\* \* \*

# DIRECT EXAMINATION OF MRS. VAIL DELONY

[p. 896] Q. (By Mr. Keyser) You are the mother of Betty Delony Reed?

A. Yes.

Q. And the wife of the late Vail Delony?

A. That's right.

Q. You're familiar with the Delony property that -

A. Yes. I've been on it many times.

Q. The property in the vicinity of the river?

A. Yes, I've hunted out there. I hunted with my husband out there on Stack Island.

\* \* \*

[p. 898] What year did your husband die, Mrs. Delony?

A. He's been dead about 20 years. I have to look at the record. I don't remember exactly. He's been dead around 20 years.

Q. What business was he engaged in at the time of his death?

A. Sand mining.

Q. Did he have any other business?

A. Have what?

Q. Did he have any other business?

A. He was in the legislature, if you call that a business, and he was also Speaker of the House at the time of his death.

Q. Speaker of the Louisiana House of [p. 899] Representatives?

A. That's right.

Q. And he conducted sand and gravel operations in this area?

A. Yes.

Q. For about how long?

A. How long did he sand? So much of that I have to refer to my daughter because she helps me with these places where we have to come up with certain figures and times and dates. But it was started in there, was - I don't remember how long but it was quite some time with sand and gravel.

Q. Was it before your children were born?

A. Oh, yes.

Q. So, that would be longer than - how old is your oldest daughter?

A. Oh, I've forgotten. She was born in '33, I think.

Q. And so your husband's sand and gravel operations commenced before 1933?

A. Yes. Or long before that. I don't remember exactly. I've had no occasion to keep up with this.

Q. Have you ever seen anyone besides your family and friends hunt on this area of the Delony estate?

A. I've never seen anyone hunt on it but us, [p. 900] where we were hunting.

Q. Have you ever heard the name Houston, the Houston family?

A. Not until this thing came up. Never heard of them.

\* \* \*

#### DIRECT EXAMINATION OF JOSEPH A. OLIVEROS

[p. 903] A. I'm responsible for the enforcement of the Federal Wildlife laws, particularly in north Louisiana. Of course, I work in adjacent states as well. But in this particular area that shows East Carroll Parish or a portion of it, that is just along the Mississippi River east of Lake Providence, I enforce Federal Wildlife laws along the Mississippi River of this portion and the - of course, the boundary that I use, I'd refer to maps such as this [p. 904] Geological Survey map and I use the state boundary lines outlined on there.

\* \* \*

[p. 904] Q. When you have written cases dealing with law [p. 905] violations in that area, where have the cases gone to Court?

A. In this particular area all the cases that I recall writing in this particular area have all gone to Louisiana, Federal courts in Louisiana.

Q. And which particular city?

A. In Monroe, Louisiana.

\* \* \*

#### DIRECT EXAMINATION OF MICHAEL MURRAY

[p. 907] Q. (By Mr. Keyser) Are you familiar with the accreted area adjacent to Lake Providence?

A. Yes, sir, I am.

Q. About how many times have you visited that area?

A. I would say it's in the neighborhood of 150 to 200 times.

Q. You have actually been out on the accretion?

A. Yes, sir, I have.

Q. Have you hunted in that area?

A. Numerous times.

\* \* \*

[p. 908] Q. Have you enforced the Louisiana game laws in that area?



A. Yes, sir, I have.

\* \* \*

[p. 910] Q. Where do your violations go to Court?

A. Either in East Carroll Parish or Federal court in Ouachita Parish.

Q. In Monroe?

A. Right.

Q. About how many violations have you written that went to Federal court in Monroe?

A. Approximately seven.

[p. 911] Q. And about how many have gone to the court in Lake Providence?

A. Two that I can recall.

Q. Have you written Federal violations?

A. Of the nine violations that I wrote there, seven were Federal.

\* \* \*

[p. 913] Q. What types of violations or regulatory activity did you work in the river itself?

A. Mainly commercial/sport fishing, boating activities, duck hunting, just all types of hunting generally.

Q. Even though that area is a good deal to the east of the accreted area on the map?

A. That's correct.

Q. Have you ever seen any Mississippi Wildlife agents on the island itself on the accreted area?

A. No, sir, I haven't.

Q. All during the time that you were growing up as a boy living in lake Providence?

A. No, sir, I never have.

Q. Have you ever seen the Houston family out on the island?

A. No, sir, I haven't.

\* \* \*

#### DIRECT EXAMINATION OF JOE CHATMAN

[p. 916] Q. And do you also work the accreted area known as Stack Island?

A. On the island itself, sir?

Q. Yes.

A. I have been over there on occasion, yes.

Q. About how many times have you been there?

A. Approximately in my years of service probably 12 times, 12 to 15, something like that.

Q. About how long have you been with Wildlife and Fisheries?

A. Fourteen years.

[p. 917] Q. Have you ever written any violations on the island?

A. To clarify, sir, are you talking about just the Tall Bridge part or just from the levee clean over to the river?

Q. From the levee to the river.

A. Yes, sir, I have written violations in that area.

Q. What types of violations?

A. Most of them have been for boating safety and commercial and fishing.

Q. And where do your cases usually go to court?

A. Sixth District Court of Lake Providence, state court, unless they're a Federal violation. In Monroe, Louisiana, District is Federal Court.

Q. Have any of your cases ever gone to court in Mississippi?

A. No, sir, they have not.

\* \* \*

#### DIRECT EXAMINATION OF BILLY JACK MURRAY

[p. 922] Q. And you're familiar with the accreted area adjacent to Lake Providence?

A. Yes.

Q. Have you ever hunted on that land?

A. Yes, sir.

Q. Could you tell us how long you hunted there?

A. Probably started when I was around 12 years old. I haven't hunted the last 12, 15 years over there.

Q. Okay. When you did hunt there, did you do it [p. 923] with others?

A. Yes, sir.

Q. People from the Lake Providence area? Did you ever hunt with anyone from the Houston family?

A. No.

Q. Do you know the Houstons?

A. No.

Q. Have you ever seen them?

A. No.

Q. Have you ever seen any Mississippi people in the accreted area there at Lake Providence?

A. No.

Q. Have you ever seen any posted signs out on the island?

A. No.

\* \* \*

Q. Have you ever seen any Mississippi people hunt in that area?

A. If there were, I didn't know it.

\* \* \*

[p. 924] Q. You just have hunted there. have you ever seen any Louisiana Wildlife agents out there?

A. Yes.

Q. Ever seen any Mississippi Wildlife agents?

A. No.

\* \* \*

[p. 925] Q. (By Mr. Keyser) You've lived in the Lake Providence area during the time that accretion was forming?

A. Yes.

Q. Could you describe to the Court, please, how it formed?

A. It just built up a sandbar, just a bar.

Q. And the willow trees started to grow?

[p. 926] A. Yeah.

Q. And it was attached to the Louisiana shore?

\* \* \*

Q. (By Mr. Keyser) Could you describe to the Court, please, how the accretion formed.

A. Well, it just attached to the end of the isalnd [sic] right across the first chute right there, what we call Baleshed chute I think.

Q. And gradually built and built?

A. Uh-huh.

\* \* \*

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